United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

Docket No. 76-4275

In The

United States Court of Appeals

For the Second Circuit

COMMUNICATION WORKERS OF AMERICA, LOCAL 1122, *Petitioner,*

— *vs.* —

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

NEW YORK TELEPHONE COMPANY, *Intervenor.*

Petition for Review from the National Labor Relations Board

JOINT APPENDIX

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES
Attorneys for Petitioner
One Niagara Square
Buffalo, New York 14202
(716) 849-1333
RICHARD LIPSITZ, ESQ.
of Counsel

NATIONAL LABOR RELATIONS BOARD
Attorneys for Respondent
1717 Pennsylvania Avenue N W
Room 1222
Washington, D.C. 20570
JOSEPH OERTEL, ESQ.
of Counsel

BERNARD YAKER, ESQ.
Attorney for Intervenor
Legal Department
New York Telephone Company
1095 Avenue of the Americas
New York, New York 10036
(212) 395-6135

Daily Record Corporation
Rochester, New York

(S8718)

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CHRONOLIGICAL LIST OF RELEVANT DOCKET ENTRIES.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Communications Workers of America, Local 1122

Case No. : 3-CB-2565

7.24.75	Charge filed
7.25.75	Complaint and Notice of Hearing, dated
10.7.75	Petitioner's 1/ Answer, received
11.20.75	Notice of Intention to Amend Complaint, dated
11.24.75	Order Rescheduling Hearing, dated
12.29.75	Order Rescheduling Hearing, dated
1.15.76	Request for Further Postponement of Hearing, (Petitioner's) received
1.19.76	Hearing opened
1.20.76	Hearing closed
5.18.76	Administrative Law Judge's Decision issued
6.2.76	Administrative Law Judge's Errata dated
6.28.76	Charging Party's Letter requesting permission to argue orally before the Board, dated
6.29.76	General Counsel's Exceptions to the Decision of the Administrative Law Judge, received
7.6.76	Charging Party's Exceptions, received
7.17.76	Petitioner's Answer to Exceptions, received
9.23.76	Decision and Order issued by the National Labor Relations Board

1/ Petitioner herein was Respondent before the Board.

BEST COPY AVAILABLE

CHARGE, filed 7-24-75.

FORM NLRB-508 (12-65)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 3-CB-2565

Date Filed 7-24-75

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Communications Workers of America, Local 1122

b. Union Representative to Contact: Nelson C. Becker

c. Phone No.: 716-633-2211

d. Address (Street, city, State and ZIP code): 706 Beach Road, Buffalo, New York 14225

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) [illegible] (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 3, 1975, Communications Workers of America, Local 1122 has restrained and coerced Richard Macvie and other employees in the exercise of their rights guaranteed in section 7, namely the right to accept acting management positions.

Since on or about July 3, 1975, Communications Workers of America, Local 1122 has restrained and coerced New York Telephone Company in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances by seeking to prevent its members from accepting acting management positions.

Since on or about July 3, 1975, Communications Workers of America, Local 1122 has refused to bargain collectively with New York Telephone Company by unilaterally seeking to prevent its members from accepting acting management positions in violation of the collective bargaining agreement.

3. Name of Employer: New York Telephone Company

4. Location of Plant Involved (Street, city, State and ZIP code): Various Telephone Company locations in and around the City of Buffalo.

5. Type of Establishment (Factory, mine, wholesaler, etc.): Telephone Company work locations

6. Identify Principal Product or Service: Telephone Communications

7. No. of Workers Employed: 1274

8. Full Name of Party Filing Charge: New York Telephone Company

9. Address of Party Filing Charge (Street, city, State and ZIP code): 1095 Avenue of the Americas, New York, New York 10036

10. Telephone No.: (212) 395-2121

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person making charge)

Director of Labor Relations (Title or office, if any)

Address: Raymond E. Williams, 1095 Avenue of the Americas, New York, New York 10036

(212) 395-0712 (Telephone number)

July 21, 1975 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 865-456

DECISION AND ORDER ISSUED BY THE NATIONAL LABOR RELATIONS BOARD, 9-23-76.

JPW

D--1626
Buffalo, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1122

and

Case 3--CB—2565

NEW YORK TELEPHONE COMPANY

DECISION AND ORDER

On May 18, 1976, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed a brief in answer to the exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1/] and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The complaint alleges, inter alia, that Respondent violated Section 8(b)(3) of the Act by institution of an unlawful ban against its members' acceptance of temporary supervisory positions and by implementation of the ban by filing intraunion charges against a union member who accepted the temporary position;

1/ The request for oral argument by the Charging Party is hereby denied as the record and briefs adequately present the issues and positions of the parties.

that the filing of intraunion charges against the member who accepted the temporary supervisory position is an attempt to enforce conduct violative of Section 8(b)(3) and is therefore itself violative of Section 8(b)(1)(A); and that the ban violates Section 8(b)(1)(B) in that it restrains and coerces the Company in the selection of supervisors who accept and adjust grievances. The Administrative Law Judge found Respondent had not engaged in any unlawful activity and dismissed the complaint in its entirety. We disagree. Our review of the record reveals that the Administrative Law Judge's findings of fact and conclusions of law are not supported by the record.

The Communications Workers of America (CWA), AFL—CIO, hereafter the National Union, has had a number of collective-bargaining agreements with the New York Telephone Company, hereafter the Company, since 1961. These collective-bargaining agreements, including the current one which runs from July 18, 1974—July 6, 1977, have recognized the National Union as the exclusive collective-bargaining representative of approximately 30,000 of the Company's employees. These employees are in a single statewide unit and all of the collective-bargaining agreements have been negotiated on a statewide basis by the National Union. Throughout the State, there are 22 locals of the National Union which have bargaining unit employees as members. The constituent locals have no authority to negotiate collective-bargaining agreements with the Company, and any modification of the existing contract must be in writing and signed by the parties to the contract themselves.[2/] The Respondent, Communications Workers of America, Local 1122, is one of these 22 locals, and its members are employed in bargaining unit positions in the metropolitan Buffalo, New York, area.

2/ The collective-bargaining agreement contains a waiver clause that requires any modification to the collective-bargaining agreement to be explicitly set forth in writing and to be signed by both parties to the contract.

DECISION AND ORDER ISSUED BY THE NATIONAL LABOR RELATIONS BOARD, 9-23-76.

Prior to the onset of the collective-bargaining relationship between the Company and the National Union, the Company had an established practice of assigning unit employees to act as temporary supervisors. In the subsequent collective-bargaining agreements between the parties, this practice was established as a formal contract right. In the current contract, article 8, Transfers, provides:

> The Company may transfer or assign, temporarily or permanently, any employee from an occupational classification to another, or from one assignment to another within the same occupational classification, or from an occupational classification to a position outside of the bargaining unit either as a step in force adjustment or for other purposes. (Emphasis supplied.)

The overtime provisions of the contract also, by inference, recognize the Company's right to make such assignments. It provides:

> An employee temporarily promoted to a management job shall be charged with the average overtime of his unit during the entire period of his absence from his unit on the acting assignment. (Emphasis supplied.)

In a similar manner, the dues deduction clause implies the Company's right to make temporary supervisory assignments. It provides:

> An employee's written authorization for such deduction shall be cancelled automatically by the Company when the employee is transferred, except on an acting basis, to a position wherein he is no longer covered by the terms of this Agreement. The Company will notify the Union of all such permanent transfers. (Emphasis supplied.)

During the negotiations for the 1968 contract, the National Union submitted a contractual proposal which sought to limit the Company's right to appoint temporary supervisors. The Company, however, rejected this proposal and the National Union has not sought to reintroduce a similar proposal during subsequent negotiations for the 1971 and 1974 contracts. Based on the above, we find the contract clearly grants the Company the right to assign temporary supervisory positions to unit employees.

Notwithstanding the National Union's failure to achieve any contract limitations on the Company's right to make assignments of temporary supervisory positions, Local 1122, the Respondent, unilaterally instituted a ban on all such assignments in June 1969. From June 1969 to August 1972, the Company did not contest Local 1122's ban in the Buffalo area, and no temporary supervisory assignments were made in that area. However, elsewhere within the statewide unit, the Company continued to make such assignments.[3/] Beginning in August 1972, the Company again began to make temporary supervisory assignments within the Buffalo area. Altnough the ban remained in effect, Local 1122 made no effort to oppose the Company's renewed application of its contract rights. However, in July 1975, Local 1122's chief steward signed an intraunion charge against a union member, Richard Macvie, who had accepted a tempoaray supervisory assignment in June 1975.[4/]

Section 8(b)(3)

The Administrative Law Judge found that the ban imposed by the Respondent did not violate Section 8(b)(3) because the Company's abstention from utilizing temporary supervisors from 1969--1972 "constituted an implied agreement by the Employer to refrain from doing so, and/or its acquiescence in the Respondent's demand that the practice be terminated." We disagree. We find no merit to the finding that the Company's temporary acquiescence in the ban constituted an "implied agreement" by the Company to refrain from such assignments. As previously mentioned, the contract contains a waiver clause which requires any modification of the collective-bargaining agreement to be explicitly set forth in writing and

---

3/ The Company made no assignments anywhere in the State between July 14, 1971, and February 18, 1972, during which period the entire unit was on strike.

4/ Since the collective-bargaining agreement designates the chief steward to be a representative of the Local, we find that the intraunion charges were filed by an agent of Respondent on behalf of Respondent.

to be signed by both parties to the contract. There is no evidence of any such waiver signed by the Company and the National Union. Accordingly, we find the Company at no point agreed to the ban.[5/]

We also find no merit in the Administrative Law Judge's finding that the Company's temporary abstention of utilizing action supervisors constituted an acquiescence in the Respondent's demand that the Company cease making such assignments. As pointed out above, the collective-bargaining agreement covers a statewide unit and was negotiated by the National Union. The Respondent is merely a constituent local of the authorized collective-bargaining agent, and absent a specific provision, it has no right to make any demands modifying the collective-bargaining agreement.[6/] The Company's temporary abstention from appointing acting supervisors between 1969 and 1972 was therefore voluntary and did not constitute acquiescence in Respondent's demand that the contract be modified. Accordingly, we find that Respondent's attempts to ban the Company's appointment of temporary supervisors constitutes an unlawful attempt to alter the collective-bargaining agreement in violation of Section 8(d) and 8(b)(3) of the Act.[7/]

5/ We find no merit in Respondent's claim that the Company had established a practice of meeting with the Respondent and making oral modifications to the collective-bargaining agreement between the National Union and the Company. The examples cited by Respondent concerning local practices involving switchmen's tours, upgrading of jobs, vacation scheduling, and lunch hour durations are all rooted in contract provisions or were voluntary privileges granted by the Company to comply with practices established prior to the collective-bargaining relationship with the National Union. We find no evidence of any arrangement or contract provisions providing for local negotiations concerning the assignment of temporary supervisory positions.

6/ In fact the National Union opposed attempts by its constituent locals to unilaterally modify the contract by banning the assignment of temporary supervisory positions. In a 1973 letter (the Administrative Law Judge incorrectly reported 1975 as the date of this letter) the National Union notified locals that an attempt to ban the Company's assignment of temporary supervisory positions was contrary to the National Union's constitution and therefore was impermissible.

7/ Communications Workers of America, AFL--CIO Local 1170 (Rochester Telephone Corporation), 194 NLRB 872 (1972), enfd. 474 F.2d 778 (C.A. 2, 1972).

Section 8(b)(1)(A)

In similar fashion, the Administrative Law Judge found that since Respondent's ban did not violate Section 8(b)(3), the intraunion charge against a member who violated that ban was a permissible effort to protect legitimate union interest and did not violate Section 8(b)(1)(A). However, as a corollary to our finding that Respondent's ban violated Section 8(d) and 8(b)(3), we find the intraunion charge against Richard Macvie, the union member who ignored the ban, also violated Section 8(b)(1)(A). In Scofield v. N.L.R.B., 394 U.S. 423, 432 (1969), the Supreme Court pointed out that the enforcement of a union rule may be handled as an internal union matter and not necessarily violate Section 8(b)(1)(A) of the Act "unless some impairment of a statutory labor policy can be shown." In the present case, the intraunion charge does not stem from the violation of a lawful union rule dealing with internal union affairs, but rather, as found elsewhere in this decision, the intraunion charge is an attempt to enforce conduct violative of the Act. Such conduct, of course, constitutes the type of "impairment of a statutory labor policy" referred to by the Supreme Court. Accordingly, we find that Respondent's attempt to unilaterally alter an existing collective-bargaining agreement in violation of Section 8(d) and 8(b)(3) also constitutes restraint and coercion in violation of Section 8(b)(1)(A) when it attempts to enforce that unlawful action through intraunion charges.

Section 8(b)(1)(B)

The Administrative Law Judge also dismissed the 8(b)(1)(B) allegation, finding, inter alia, that permanent supervisors and temporary supervisors did not possess the authority to adjust grievances. Our examination of the record reveals no support for such a finding. On the contrary, the record contains an abundance

of evidence establishing that supervisors (including temporary supervisors) possess the authority, and in fact accept grievances, process grievances, and participate in the adjustment of grievances. Further, specific evidence was also introduced which clearly establishes that temporary supervisors have the authority to hear and resolve employee problems and complaints which have not ripened to formal grievances, and they have in fact adjusted such matters. Accordingly, it is clear, and we so find, that Respondent's conduct in instituting the ban on acceptance of temporary supervisory positions and its subsequent enforcement of that ban constitutes restraint and coercion of the Company in the selection of supervisors in violation of Section 8(b)(1)(B) of the Act.

The Remedy

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(b)(3), 8(b)(1)(A), and 8(b)(1)(B), we direct Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having also found that Respondent filed intraunion charges against unit employees who violated the ban, we direct that Respondent expunge from its records all actions taken against unit employees who violated the ban and cancel, withdraw, rescind, and reimburse any penalty which has been assessed against any such employee. We further direct that Respondnet make whole any unit employee who had accepted and then was forced to relinquish a temporary supervisory position because of the ban. The reimbursement of any assessed penalties and the backpay due any unit employee who was forced to relinquish a temporary supervisory position because of the ban will be determined in accordance with the formula set forth in F. W. Woolworth Company, 90 NLRB 289 (1950), and Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Communications Workers of America, Local 1122, Buffalo, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Instituting, maintaining, or enforcing any ban or embargo against the acceptance by unit employee union members of assignments to positions as temporary supervisors, without affording the Company a timely opportunity to bargain within the meaning of Section 8(d) of the Act.

(b) Restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, by threatening to impose penalties upon employees, or bringing charges against employees or penalizing employees for accepting assignments to positions as temporary supervisors in violation of Respondents' ban against such action.

(c) Restraining or coercing New York Telephone Company in the selection of representatives for the purpose of collective bargaining or adjustments of grievances by engaging in the conduct set forth in (a) and (b) above.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Cancel, withdraw, and rescind the ban or embargo and immediately notify the Company, in writing, that such action has been taken.

(b) Cancel, withdraw, and expunge from Respondent's records all action taken against Richard Macvie and any other unit employee because of the ban and immediately notify such employees by personal letter that such action has been taken.

(c) Cancel, withdraw, and rescind any penalty which has been assessed against Richard Macvie and any other unit employee because of the ban or embargo and reimburse any such employee for any penalty which has been assessed for such reason.

(d) Make whole Richard Macvie and any other unit employee who had accepted appointment as temporary supervisor and who was forced to relinquish such position by reason of the ban, or the threat of imposition of penalty, should they remain as temporary supervisors during the existence of the ban. Such employees shall be made whole in accordance with the manner set forth in the section of this decision entitled "The Remedy."

(e) Post at its business office and meeting hall copies of the attached notice marked "Appendix."[8/] Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Furnish the Regional Director for Region 3 with signed copies of said notice for posting by New York Telephone Company, if willing, in places where notices to employees are customarily posted.

8/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(g) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. SEP 23 1976

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

DECISION OF ADMINISTRATIVE LAW JUDGE,
issued 5-18-76.

Buffalo, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1122

and

Case No. 3-CB-2565

NEW YORK TELEPHONE COMPANY

John J. Matchulat, Esq., of
Buffalo, New York for the
General Counsel.
Bernard Yaker, Esq., of
Buffalo, New York, for the
Charging Party.
Richard Lipsitz, Esq.,
(Lipsitz, Green, Fahringer,
Roll, Schuller, & James), of
Buffalo, New York, for the
Respondent.

DECISION

Statement of the Case

ELBERT D. GADSDEN, Administrative Law Judge: Upon a charge filed on July 24, 1975, by New York Telephone Company, the Charging Party, herein called the Employer, a Complaint was issued by the General Counsel of the National Labor Relations Board on September 30, 1975, against Communications Workers of America, Local 1122, herein called the Respondent. The complaint alleged that the Respondent unilaterally imposed a prohibition against employer's longstanding practice of utilizing union members to act as temporary supervisors (foremen) which it sought to enforce in violation of Sections 8(b)(1)(A), 8(b)(1)(B) and 8(b)(3) of the Act. The Respondent filed an answer admitting the imposition and its efforts to enforce a prohibition against its members accepting appointments to acting supervisory positions but denied that such conduct on its part constituted a violation of the Act.

DECISION OF ADMINISTRATIVE LAW JUDGE,
issued 5-18-76.

The hearing in the above matter was held before me in Buffalo, New York on January 19 and 20, 1976. Briefs have been received from counsel for the General Counsel, counsel for the Charging Party and Counsel for the Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

Findings of Fact

I. Jurisdiction

Respondent is now, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York where it maintains numerous offices and facilities in cities, villages, and towns throughout the State of New York, and more particularly in Buffalo and the western New York State area. In all of these locations the Respondent is engaged in the business of providing and installing local and long distance telephone communication and related services in the State of New York.

During the past 12-month, a representative period, Respondent derived gross revenues in excess of $1,000,000 from its communication services between points within the State of New York and points in other States. During the past year, Respondent, in the course and conduct of its business operations, purchased, transferred and delivered to its offices and facilities in New York State, goods, materials and supplies valued in excess $50,000 which were transported to said offices and facilities directly from States of the United States other than the State of New York.

The complaint alleges, the Employer admits, and I find that Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

The complaint alleges, the answer admits and I find that Respondent Local 1122 CWA is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act; and that Communications Workers of America, AFL-CIO, herein called The National Union (CWA), is and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. Background

New York Telephone Company, the Employer herein, maintains numerous offices and facilities throughout the State of New York for the purpose of providing and installing local and long distance telephonic

communications and related services in the State of New York. Since 1961 the Respondent, Communications Workers of America (CWA) AFL-CIO, herein called the National Union, of which Local 1122 is a constituent has been the collective bargaining representative for an appropriate unit of Employers' employees throughout the State of New York, and the parties (Employer and Respondent) have negotiated and executed several state-wide collective bargaining contracts including the current one which was executed July 18, 1974 and is to expire July 6, 1977. During the course of their bargaining relationship, Employer has utilized on frequent occasions union-member employees as acting or temporary foremen in just about all first line supervisory positions in its business operations throughout the State. However, on or about January 25, 1975, Local 1122 of the CWA voted to impose a ban (prohibition) upon its members accepting acting supervisory positions for the employer. Subsequently, when one of its member employees accepted such an appointment by Employer, Respondent initiated internal union disciplinary charges against the employee for accepting the temporary appointment. Employer now alleges that the imposition of the ban (prohibition) and Respondent's subsequent efforts to enforce it against member employees constituted a violation of the Act.

The Employer contends that since its present and several of its prior collective-bargaining contracts provided for its utilization of union employees as acting supervisors, and since such utilization by it was a widespread practice throughout the State, the Respondent did not have authority to modify the contract negotiated and executed with The National Union, and therefore, Respondent's ban and attempted enforcement of the same constituted a violation of its contract and an unfair labor practice under the Act. 1/

B. Employer's Use of Union Employees As Acting Foremen

By stipulation of the parties, Employer and the Respondent, agreed that the appropriate bargaining unit consists of the following:

> Included: All plant, network operations, customer services, technical services, engineering and facilities employees of New York Telephone Company whose occupational classifications are listed in the craft, building and supplies, clerical and miscellaneous appearing in Article 31; all employees in the Empire City Subway Company (Limited;) it being understood that the certified unit shall include only those employees employed in occupational classifications which were included in the certified unit under the previous collective-bargaining agreement.
>
> Excluded: All guards, watchmen, professional employees, supervisors as defined in the National Labor Relations Act, as amended, and employees regularly performing confidential labor relations duties.

1/ The Facts set forth above are undisputed and are not in conflict in the record.

The above described collective bargaining unit is a statewide unit consisting of approximately 30,000 employees, for whom all collective-bargaining agreements are negotiated by the National Union (CWA) on a state-wide basis. Several of the collective-bargaining agreements executed between the parties (General Counsel's Exhibits No. 2, 3, 4, 5 and 6) provide as described in Article 30, Section 30.01:

Waiver or Modification

> This agreement constitutes the entire agreement between the parties, and no waiver or modification shall be effective unless signed by the parties hereto, and no such writing, applicable to any particular instance or instances shall be construed as general waiver or modification, but shall be strictly limited to the extent and occasions specified herein.

According to the undisputed and credited testimony of Mr. Nelson C. Becker, an employee of the Employer of 34 years duration, and currently vice president of Local 1122, Mr. Morton Bahr is vice president of the CWA, District No. 1, which consists of the entire State of New York; and that all of the several Locals over the State including their officers, are subordinate to the jurisdiction of the CWA and Vice President Bahr.

General Counsel's Exhibit No. 2, page 127, under the topic Overtime Charging, Item 8, provides:

> An employee temporarily promoted to a management job shall be charged with the average overtime of his unit during the entire period of his absence from his unit on the acting assignment.

Article 5, Payroll Deductions of Union Dues, paragraph 5.04, (General Counsel's Exhibit No. 2, page 8) provides:

> An employee's written authorization for such deductions shall be cancelled automatically by the Company when the employee is transferred, except on an acting basis, to a position wherein he is no longer covered by the terms of this agreement.

* * *

The above-described provisions were included in most of the collective-bargaining agreements executed between the parties in essentially the same language since 1964.

Mr. James Hennessy, general manager of the western area of New York Telephone Company since January 15, 1976, was previously assistant vice president, Human Resources in the State region for Employer since September 1974. He testified as follows:

A. The New York Telephone Company is divided into two main parts, New York City Region, consisting of three burroughs, New York and all the rest of the State, which we call the State Region, and within the State Region, that's also divided into two parts, the Upstate Territory and the suburban territory.

Q. And what is referred by the Upstate territory?

A. It includes the western area, Buffalo area, and it includes Niagara Falls, Olean; the central area, Syracuse, Binghamton, Watertown, and the northeast area, which includes Albany, Utica and part-way down the Hudson River, and up to Canadian Border, again.

Mr. Hennessy stated that the suburban territory included the geographic area of Long Island, outside the City of New York, Westchester and Rockford Counties, and another in the outer mid-Hudson area, south of Albany County.

Mr. Hennessy's employment with the Employer dates back to December of 1958 when he started as a plant department trainee and thereafter served in numerous capacities on numerous levels in and around numerous offices and facilities of the Employer. In the several capacities in which he served, including personnel supervisor, Mr. Hennessy dealt with second step grievance proceedings as manager of the mid-Hudson area. He continued to testified as follows:

Q. Mr. Hennessy, referring to the period from October 1st, 1968 to November 1st, 1971 while you were Division Plant Superintendent in the western area, will you please describe your duties and responsibilities?

A. Yes, I was responsible for all of the installation and repair service and assignment facilities in the Western Area, which I mentioned before, including everything from Niagara Falls to Olean. In that capacity I was responsible for the efficient effect of production in those services for employee relations and labor relation activities.

Q. During that period, Mr. Hennessy, with respect to labor relation duties, do you deal with any locals of the Communications Workers of America?

A. Yes, the three locals in the western area, 1117 Niagara Falls, 1115, Hamburg-Olean Area and 1122 in Metropolitan Buffalo.

Q. Mr. Hennessy, during that period while you were Division Plant Superintendent in the western area, were union employees used to fill Acting Supervisory position?

A. Yes, they were.

Q. And under what circumstances were union employees used to fill Acting Supervisory positions?

A. Well, under the circumstances that there was a need, because of vacation coverage, because of a foreman was out ill on disability, of course it may be expanded on a temporary basis. They may be cut over new equipment and need supervision for a short period of time, and those were the primary reasons there would be a need for an Acting Foreman. And of course always it provides us an opportunity to see craft people in a different role, in a managerial role for a short period of time.

Mr. Hennessy said union employees were appointed to or rather assigned to and served in various titles of line foremen positions such as service foremen, central office foremen and bureau foremen. The union employee is selected as a result of a recommendation by his foreman to the second line supervisor who would either approve or disapprove of the recommendation. If the recommendation were approved, the offer would then be made to the individual individual union employee to act as temporary foreman. The immediate foreman of the employee would advise him that he had been selected to serve as acting foreman. The duties of first line supervisors involve planning the work load and assigning the work to individual craftsmen to perform, checking to make sure that the work is done productively and up to standards and quality, insuring that employees complied with the attendance and tardiness standards, coaching and training individual employees, and determining needs for overtime work and assigning it to individual employees as required; and receiving and hearing grievances as well as settling any informal problems that arise.

Also, while serving as Division Plant Superintendent of the western area Mr. Hennessy said first line supervisors had authority to discipline employees or they could recommend disciplinary action which had to be approved by a higher level supervisor. The acting supervisors had essentially the same authority the permanent supervisors had. Acting supervisors were given an increase in salary of 6 percent of the permanent supervisors top salary for that area. The Employer utilized the union employees as acting supervisors in the same manner in other areas and locations where he (Mr. Hennessy) has worked since he was employed by the Employer in 1958, except the pay formula was reduced from 10 percent to the current 6 percent of top salary basis during the acting period.

Mr. Hennessy then identified and explained General Counsel's Exhibit No. 16, a compilation of data from official Company (employer) business records describing times, the number of individuals, and the kinds of supervisory positions for which various local union employees were utilized by Employer as acting supervisors during the years 1962 through 1975 in the Upstate area. The practice of utilizing such union employees was widespread and consistent throughout the State. Upon his

orders, Mr. Hennessy said similar data was compiled, for the suburban territory part of the State region and the New York City region from the official business records of the Employer on the 200 to 300 district offices of the Employer throughout the State of New York. The data involved union employees of Local 1102, 1103, 1107 and 1108 for the years 1961 through 1975. 2/

2/ These data, which comprised General Counsel's Exhibits 17 and 18, were conditionally admitted into evidence over the objection of Counsel for the Respondent because such data corresponded with, and complemented, data in General Counsel's Exhibit No. 16, which was previously examined by Counsel for the Respondent and to which he stipulated admission. General Counsel's Exhibits 17 and 18 were also admitted because to require Employer to pull and produce all of the timecards and payroll records from all of its many district offices throughout the heretofore described regions, would be imposing an undue and burdensome obligation on Employer, especially so since such data is only supplementary to the data in General Counsel's Exhibit No. 16, which was deemed accurate and established that the utilization of union employees by Employer as acting supervisors was a general, longstanding, widespread and consistent company (Employer) practice throughout Upstate New York; because the data therein was compiled in like manner and is essentially the same in composition to the data in General Counsel's Exhibit No. 16; because Respondent has not advanced or offered any reason which it believed reasonably questions the accuracy or authenticity of the data in question; that Counsel for Employer had advised Counsel for the Respondent in advance of this proceeding that such data had been requested and was being prepared," that the preparation of the subject data was not completed until a few days before the date of this proceeding (January 19 and 20, 1976); that these data were prepared between early December and late December 1975 and presented to Counsel for Employer, Mr. Yager, in late December or early January 1976. Such data is a strong inference of the truth when it is considered along with Mr. Hennessy's testimony on the same and the data compiled in General Counsel's Exhibit No. 16; that the Administrative Law Judge had Employer and its Counsel to promise on the record that its records supporting the data in General Counsel's Exhibits 17 and 18, would remain available for examination by Counsel for the Respondent after the close of this proceeding to allow him an opportunity to examine said data before the time for the submission of briefs (March 1, 1976) herein; and the Court advised Counsel for the Respondent to avail himself of the opportunity to inspect such records during such period and advise the Court if his examination revealed anything which indicated that the data was incorrect, inadequate or unauthentic, so that the Court could reopen this proceeding and/or exclude the data comprising General Counsel's Exhibits 17 and 18. Not having received such a motion from Counsel for the Respondent, General Counsel's Exhibits 17 and 18 are hereby unconditionally received as a part of the record herein.

C. The Supervisory Nature Of The Function Of An Acting Foreman

In an effort to support the testimony of Mr. Hennessy to the effect that acting supervisors have the authority to participate in accepting and adjusting grievances, Employer (through Mr. Hennessy) ordered the compilation of data extracted from the grievance minutes allededly taken by unit employees acting supervisors which constitutes General Counsel's Exhibit No. 19. To further support General Counsel's Exhibit No. 19 that acting supervisors participate in the first step grievance procedure, Counsel for the General Counsel submitted General Counsel's Exhibits Nos. 23, 24, 25, 26, 27, and 28 from the western area of New York to complement the summary data in General Counsel's Exhibit No. 19. In view of Counsel for the Respondent's consistent objection to the admission of General Counsel's Exhibit 19 and thereafter, to General Counsel's Exhibits 23 through 28, the General Counsel submitted copies of the actual grievances (General Counsel's Exhibits 29 through 47), in further support of General Counsel's Exhibits 19 and 23 through 28. The Administrative Law Judge admitted all of General Counsel's Exhibits (19 and 23 through 47) in the order in which they were introduced over the strenous objection of Counsel for the Respondent, in order to afford himself an opportunity to thoroughly examine and evaluate each document in light the purpose for which it was submitted. 3/

The language in the position or job descriptions (Respondent's Exhibits No. 2 through 16) indicate that a permanent supervisor has the authority to: Participate in first step union grievances, and to administer the Union contract and participate in grievance discussions in handling first step hearings. Counsel for the Respondent points out that such

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3/ While an examination of General Counsel's Exhibit 19 represents only a compilation of data extracted from official company records, indicating the names of various unit employees acting as supervisors in Upstate New York who were also involved in grievances of other unit employees, General Counsel's Exhibits Nos. 23-28 represents copies of reports of first step grievances signed by such acting supervisors in the western area during the year 1963 and 1975. However, General Counsel's Exhibits Nos. 29-47 represents copies of the actual grievances which show the names of unit employees, as acting supervisors, attending and participating in first step grievances which in some instances they signed as acting foreman (supervisor). Consequently, when the foregoing cumulative documentary evidence in considered in totality along with Mr. Hennessy's undisputed testimony, which I credit, the evidence is more than sufficient to support the conclusion, and I so find, that Employer's widespread practice of utilizing unit employees as acting supervisors also, on occasion, included their receipt of, and their attendance and participation in first step grievances of other unit employees.

language was omitted from the position descriptions outlined in General Counsel's Exhibit No. 19, as well as (a) "preparation of the minutes, (b) posting overtime records, and (c) the preparation of certain reports, as outlined in Respondent's Exhibit Nos. 2-16. 4/

The parties stipulated that the negotiations of all collective-bargaining agreements (General Counsel's Exhibit Nos. 2, 3, 4, 5, and 6) of the subject unit employees since 1961, have taken place on a statewide basis between the National Union and the Employer.

General Counsel's Exhibit No. 7, Section 4(a) provides as follows:

> Membership in the Union shall be terminated when any member shall accept a position which would render him ineligible for membership, except that a member who temporarily assumed such a position may retain membership for a period not to exceed thirty (30) days, provided during such period such member shall not hold any office within the Union.

The above document is entitled Communications Workers of America, AFL-CIO, a Constitution as amended June 1974.

In attempting to establish the extent to which several locals of the National Union went in an effort to try to implement an effective ban against union employees accepting temporary or acting supervisory roles with the Employer, Counsel for the General Counsel submitted an internal memorandum (General Counsel's Exhibit No. 8) from the vice president of the National Union to all district staff members which read as follows:

September 10, 1975

TO: All District One Staff

FROM: Morton Bahr, Vice President

SUBJECT: Constitution Interpretation

4/ While this mere omission itself may not ipso facto constitute sufficient proof that Employer's supervisors and acting supervisors do not have the authority to adjust grievances, when such omission is considered along with the total evidence of record, it becomes obvious that it was not coincidentally an oversite, but rather, a clear intent of Employer not to delegate or not to specify such authority.

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A number of Local Unions have adopted or are considering adopting By-laws provisions that would make it a violation of the By-laws if a member accepted a temporary management job. Following is the exact proposal that was adopted by Local 1127.

> Effective January 31, 1969, no Local 1127 member may accept or enter into a temporary or acting management assignment. Should any Local 1127 member accept or enter into such an assignment, he or she shall be subject to charges in accordance with the Local 1127 By-laws and CWA Constitution. Should any Local 1127 member be found guilty by a duly Authorized and constituted Local 1127 Trial Court of violating the aforesaid rule, the Trial Court shall set a penalty, the minimum of which shall be a $50 fine and suspension of all rights of membership [pending payment].

John Carrol who is chairman of the Constitution Committee has advised me that the Local 1127 proposal cannot be approved since it is in conflict with Article V, Section 4(a) of the CWA Constitution which reads as follows:

> (a) Membership in the Union shall be terminated when any member shall accept a position which would render him ineligible for membership, except that a member who temporily assumes such a position may retain membership for a period not to exceed thirty (30) days, provided during such period such member shall not hold any office within the Union.

To accomplish what Local 1127 wants to accomplish would require a constitutional amendment to eliminate acting or temporary management jobs from the meaning of that section of the Constitution. This matter should be brought to the attention of your Locals. 5/

M.B.

MB/pd
cc: G. Cramer

5/ This Exhibit was admitted into evidence over the objection of Counsel for the Respondent because while it does not represent a document prepared or disseminated by Local 1122, it nevertheless represents an internal document prepared and distributed by Local 1122's superior, the National Organization, with respect to the authority of locals to implement a prohibition against union employees accepting acting supervisory positions. In this regard, the document is relevant, from the National Organization's point of view, to the crucial issue in this case, as to whether or not the efforts of Local 1122 to impose and enforce such prohibition is without legal jurisdiction to to do. This is so even though vice president of Local 1122, Nelson C. Becker, denied knowledge of receipt or filing of the above described document (General Counsel's Exhibit No. 8).

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Local 1122's Resolution Prohibiting
its Members From Accepting Acting
Supervisory Positions

Mr. Paul M. McGavis, a past president and current vice president of Local 1122 testified that early in 1969 its Tri- Local Council (composed of representatives from Locals 1122, 1115 and 1117) had agreed to ban employees from accepting acting foreman positions with the Respondent; that on April 16, 1969 Mr. Hennesy of the Employer, asked Local 1122 if the western area Locals 1122, 1115 and 1117 would consider withholding their action banning union employees from accepting acting foreman positions, in return for Employer's promise to limit and reduce the utilization of such acting positions in the western area; and that if they were willing to make that an Upstate agreement, Employer would not assign acting foremen to supervise their own work groups. He further stated that the Tri-Local proposal was put on their Tri-Local tape which was available to Employer and the entire Tri-Local membership prior to April 16, 1969.

Mr. McGavis said he then told Mr Hennessy that as a representative of Local 1122, he would take Mr Hennessy's proposal back to the first local executive board meeting for consideration. The Board decided to have further discussion with the Employer on the proposal but Mr. McGavis said he did not have further discussions with Employer because he was awaiting the results of a survey on the matter from Locals in the Upstate. Eventually, he said he learned some of the locals were receptive to the proposal but others were not. Consequently, at the May 9, 1969 membership meeting, the members by vote rejected Employer's proposal and instead, voted to invoke the original proposal to ban unit employees from accepting acting foreman positions. This resolutions was never rescinded by Local 1122 and the action was published in Local 1122's newspaper which was distributed to a to all members and third level management of the Employer, including Mr. Hennessy. Subsequently, pursuant to union contract, a copy of the resolution (General Counsel's Exhibits 9 and 10) were posted on the bulletin boards on June 15 and 17, 1975, respectively, where notices addressed to employees are customarily posted. In fact Mr. McGavis said Local 1122 and the other locals actually rejected Mr. Hennessy's proposal.

The parties stipulated that during the negotiations which took place July 1 through July 9, 1968, the Union proposed that "any employee promoted to management shall lose all seniority as to the choice of vacations, promotions, selection of tours, and transfers, upon his return to the bargaining unit, for the length of time he was promoted to management." When management asked whether the Union was trying to restrict its right to promote people to acting management, the response was "yes." When Employer asked was the Union trying to put some sort of pressure on people, employees to refuse to accept these acting management jobs, the response was "yes." However, the Employer rejected the proposals and the matter was not thereafter discussed in negotiations.

According to the credible testimony of Mr. James Hennessy and

Mr. Paul McGavis, Mr. Hennessy did meet with the bargaining committees of Locals 1122 (representing 1,000 unit employees), 1115 (representing 400 unit employees), and 1117 (representing about 600 unit employees) on April 17, 1969, when the use of acting foremen (supervisors) was discussed in Buffalo, New York.

Mr. McGavis further testified that Local 1122 had a local oral and unsigned agreement with Employer regarding "switching tours" which was negotiated in 1964 but the Union did reduce the oral agreement to writing. On cross-examination Mr. McGavis read Article 30 Section 30.01 of the current collective-bargaining agreement which provides as follows:

> A. "Article 30 Waiver or Modification 30.01. This Argeement constitutes the entire Agreement between the parties, and no waiver or modification shall be effective unless signed by the parties hereto, and no such writing, applicable to any particular instance or instances, shall be construed as any general waiver or modification, but shall be strictly limited to the extent and occasion specified herein."

Mr. McGavis then acknowledge that the above cited provision in the last collective-bargaining agreement was negotiated and signed by the International Union of the CWA. He also admitted that the agreement the Respondent contends it had with the Employer prohibiting unit employees from accepting appointments to acting supervisor positions was not ever signed by the Employer and Local 1122. He further admitted that pursuant to General Counsel's Exhibit No. 2, subparagraph 8 on page 130, and General Counsel's Exhibit No. 6, the collective-bargaining agreement, subparagraph 8, page 74, the Employer has appointed unit employees to temporary management or acting supervisor positions since 1964.

On cross-examination when Mr. Hennessy was asked to explain why there were not any appointments for acting supervisors during the year 1971, he replied that half of the year 1971 the bargaining unit was on strike and he believed the absence of any such appointment during the other half of 1971 was due to the effectiveness of Local 1122's ban on its employees accepting such positions. However, he readily admitted that he did not know as a fact whether such positions were offered to the unit employees or whether unit employees declined to accept such offers during 1971. Mr. Hennessy also admitted on cross-examination that no union employee under the jurisdiction of Local 1122 was appointed to supervisory positions following June 1969, until 1973, and that is true for Local 1122 as well as 1117 and 1115. He conceded to counsel for the Respondent that this was a significant reduction in the use of temporary supervisors following June 1, 1969.

Mr. McGavis further testified that subsequent to Local 1122's ban on union employees accepting acting supervisor positions, Employer promoted a substantial number (50-60) of unit employees to permanent foremen within a period of 6-months, as contrasted to what normally had been 15 or 20 employees.

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Mr. Roy A. Jordan in the employ of the Respondent for 23 years and now division construction superintendent, outside plant maintenance, Western Area, is responsible for maintenance and repair of outside plants, poles, anchors, cables, underground conduits, etc., and he responds to the second step grievances of employees. He deals with all three locals, 1122, 1115 and 1117. He testified that in his early career he served as an acting foreman 2 or 3 weeks, and on another occasion for 9 months as a cable splicer during which time he earned 10 % (percent) more than his salary. Generally when he served in such capacities he performed substantially the same duties as the permanent supervisor for whom he was acting. He further testified that union employees can decline to accept appointments to acting supervisors and that he knew of employees who were selected and had accepted acting first line supervisor positions. Acting supervisors have the authority and responsibility to resolve complaints on a daily basis and also resolve and/or process grievances. Mr. Jordan supported his testimony in this regard by identifying and explaining General Counsel's Exhibits 20 and 21 with respect to the number of persons and the number of times such employees have served as acting supervisors. He said acting craftsmen do not fill out a timesheet unless they are acting for 2 days or less (General Counsel's Exhibit No. 22).

The resolution of Local 1122 is published in the Union's newspaper (General Counsel's Exhibit No. 17) which was distributed to the membership and to second level management of Employer.

Mr. McGavis further testified as follows:

Q. When referring to Tri-Local Council, in what areas?

A. 1115, 1117, 1122, membership, executive membership of three locals at that time.

Q. Can you be more specific about what the proposals were that Mr. Hennessy stated to you he'd be willing to negotiate, hopefully for Upstate, but if not, for three locals?

A. I recall them specifically. First they would limit the numbers of employees in our bargaining unit who would be considered for acting foremen. They would be willing to agree to 3% pool of the same; that they would reduce this percentage of the bargaining unit pool of the available acting foremen during the summer vacation period to even less than that; that they would not assign acting supervisors so selected to supervise their own work groups. That in addition to that they would provide an additional assignment of the field dispatcher and senior frame man titles which were craft titles, but if a lead man acted in that capacity with in the contract that we felt could be better utilized prior to that time. In addition to that they offered to limit, or in fact fully restrict any transfers between our areas and other areas of acting supervisors, either within or without our western area, if we agreed to a Western Area agreement. If it was a Upstate Agreement, it would be confined to people used in regard to the pool to that area.

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Mr. McGavis also said that Local 1122 also had a lunch hour duration agreement with Employer which predated the existence of Communications Workers of America, which agreement was not consistent with the contract but nevertheless continued in force and effect since 1961, even though such agreement was not in writing.

Mr. Roy I. Bert Youngberg who was employed by the Employer 23 years and was president of Local 1115 from 1966 to 1970, testified that during his tenure as a union official, and prior to April 16, 1969, Local 1115 and Employer did negotiate the subject lunch duration scheduling of vacations, which if they were unsuccessful, the Local would have filed a grievance. However, negotiations were always successful and they negotiated or discussed other matters involving the adequacy of summer hirees.

The parties stipulated that the strike of the CWA commenced July 14, 1971 and terminated February 18, 1972; and that Local 1103's jurisdiction is the Westchester County area of the State.

On July 2, 1975 Respondent charged one of its members, Richard Macvie with violating Local 1122's rule prohibiting its members from accepting an "acting supervision" assignment; and that Macvie was "acting" from June 8 to June 14, 1975 and from June 29, 1975 to the present time (July 2, 1975) (General Counsel's Exhibit No. 11).

In a letter dated July 3, 1975 Respondent advised its union member, Richard Macvie, as follows: (General Counsel's Exhibit No. 12)

> You have been formally charged with violation of the Local's rule against accepting "Acting Supervision".
>
> The Local Executive Board has not met since the receipt of this charge to formally review it and select a trial court for the trial. You will be so advised.
>
> I have included a copy of the rule notice which is posted at your work location as well. In addition to other reasons against accepting "Acting," such as eliminating the need for more permanent foremen, we are aware of the company's excess permanent foreman situation especially in Construction and the rumored downgrade of some of them back into craft where they would fill senior positions on vacation lists etc. as well as the possibility of actually causing layoffs of junior construction workers.
>
> Any "Acting" would certainly contribute to allowing greater numbers of these permanent foreman downgrades.
>
> I ask you to immediately return to your craft position.

Macvie was subsequently advised by Local 1122 that he would be notified as to the time and date for his trial (General Counsel's Exhibit No. 13).

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Analysis and Conclusions

It is well established by the evidence of record that it has been a long standing (1964-April 1969) and widespread (New York State) practice of Employer (New York Telephone Company) to appoint union-member employees to acting (temporary) supervisory positions with the cooperation and blessings of the Communications Workers of America (CWA), of which the Respondent (Local 1122) is a constituent, until April 1969 when Respondent imposed a ban against its members accepting such temporary appointments. Five of the six successive collective-bargaining contracts executed between the Employer and the CWA contain provisions essentially the same as presently constituted under paragraph 8 of General Counsel's Exhibit No. 2, page 130, and Article 5, subparagraph 5.04 on page 8 of General Counsel's Exhibit No. 2, respectively, which provide as follows:

> An employee temporarily promoted to a management job shall be charged with the average overtime of his unit during the entire period of his absence from the unit on the acting assignment.
>
> An employee's written authorization for such deductions shall be cancelled automatically by the company when the employee is transferred, except on an acting basis, to a position wherein he is no longer covered by the terms of this Agreement.

* * *

Employer contends that Respondent's union is bound to honor and comply with the acting supervisor practice by its current collective-bargaining contract, and that Respondent's enforcement of a ban against the practice constitutes a breach of contract and a violation of Section 8(b)(3) of the Act.

None of the five collective-bargaining agreements executed between Employer and the CWA, by which Respondent (Local 1122) is bound, contained any specific provisions compelling Employer to authorize, or compelling any union-member employee to consent to, the practice of utilizing unit employees as acting supervisors. However, each contract nevertheless does recognize the practice by provisions governing matters ancilary to the practice itself. That is, the language in both of the above described provisions presupposes that Employer has offered a union-member employee such an appointment and the employee has accepted the appointment. It is further observed that the language in neither of the above cited provisions is mandatory with respect to initiating or continuing the practice of utilizing acting supervisors. In fact the Employer testified that any union-member employee who is offered such an appointment is free to decline acceptance. Correspondingly, its clear from both the language of the heretofore cited contract provisions and the evidence of the practice itself, that while Employer may not be legally bound by the contract to make or to cease from making such appointments, it nevertheless did make frequent and widespread acting supervisory appointments prior to April 16, 1969. The Respondent admits

and concedes that it acquiesced in Employer's practice of using acting supervisors. Under these circumstances, the mutual recognition of the practice as supported by the ancilary contract provisions by which the practice was actually carried out, became a term and condition of employment by which the parties (Employer and Respondent) were obliged to bargain.

The record shows that as early as 1967 Local 1103 of the CWA had imposed a ban against its members acceptance of acting supervisory appointments and that the Employer had knowledge of such ban. During one of its ocassional meetings with Respondent the Employer requested the three Locals, 1115, 1117, and 1122 which had demanded abolition of the acting supervisor practice, to delay imposing a ban upon its employees accepting acting supervisory positions. In consideration of such forebearance, Employer promised to limit the duration of such future appointments to 30 days and to refrain from assigning such acting supervisors to supervise their own work group. The Locals took Employer's offer back to its executive board which submitted it to the full membership for vote. The membership rejected Employer's offer and in turn voted to impose a ban upon its membership accepting Employer's appointments to acting supervisory positions. Employer was apprised of the membership's action and did not make any further demands upon the three named Locals, but nevertheless, did refrain from appointing any union-employees to supervisory positions from April 16, 1969 until 1971. When the Employer was asked why were there no appointments of acting supervisors during the year 1971, the latter replied that Local 1122 was on strike for about 6 months of that year and it attributed nonappointments during the remaining 6 months to the effectiveness of the Union's ban on its membership accepting such appointments.

The Respondent contends, and I find that Employer's sudden and obvious abstention from utilizing acting supervisors following the Employer-Local meeting in 1969, for a period of 2 years, constituted an implied agreement by Employer to refrain from doing so, and/or its acquiesance in the Respondent's demand that the practice be terminated. The nonappointment of unit employees to temporary or acting supervisory positions during such 2 year period became a term or condition of employment by which Employer and Respondent were thereafter obliged to bargain. At this juncture, Employer and Respondent were neither bound by contract nor practice to recognize the utilization of union employees as temporary supervisors. The record further shows and I find that in 1971, Employer proceeded to utilize union-member employees as acting supervisors, thereby reinstituting the prior practice in derogation of the current practice of 2 years duration of not making such appointments. When Employer appointed union-member employee Richard Macvie to an acting supervisory position which Macvie accepted, Local 1122 charged Macvie with violating its rule against accepting such appointments and selected a trial court to exact the fine against him. The Employer now contends that the Respondent, by promulgating and now attempting to enforce its ban against its membership accepting acting supervisory positions violated Sections 8(b)(1)(A) and 8(b)(3) of the Act as the Union did in Rochester Telephone Corporation infra, and it also violated Section 8(b)(1)(B) of the Act.

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In this regard, CWA AFL-CIO Local 1170 (Rochester Telephone Corp), 194 NLRB 872 (1972), cited by counsel for Employer, is distinguishable from the facts in the instant case. There, unlike here, the Union was successful in bargaining sessions to have the Employer agree to modify the long-time practice by limiting the duration of temporary or acting supervisors to 30 days, and by promising that whenever possible, such employees selected would not be assigned to supervise their own work group. This negotiated limitation on the practice of assigning temporary supervisors was accepted by the Union and was subsequently reaffirmed by the Employer in letters to the Union and thereby, became a part of the contemporaneous bargain in executing the prior contract between the parties. Consequently, when the Union thereafter adopted an unqualified ban on its member-employees accepting temporary supervisory positions, the adoption and enforcement of such ban constituted a modification of extended provisions of its collective-bargaining contract in violation of Section 8(b)(3) of the Act.

Although Local 1122, Respondent herein met with Employer (Mr. Hennessy) on April 16, 1969, it was nevertheless unseccessful in getting Employer to abandon the practice and Respondent rejected Employer's offer to modify the practice. However, the Union herein did not abandon its demand for abolition of the practice as did the union in the Rochester case. In any event, prior to April 16, 1969, common in the instant and in the Rochester case, is the apparent right of unlimited reliance of the Employer herein, and the right of limited reliance of the Employer in Rochester, on the longstanding practice of assigning unit employees to temporary supervisor positions. Subsequent to April 16, 1969 or soon thereafter, the practice of appointing acting supervisors was terminated by Employer at the request of the Locals, and a new practice of nonappointments was substituted therefor by which both parties (Employer and Local 1122) were bound and on which both were entitled to rely. Since the prior appointing practice was not in existence Employer nor Local 1122 can unilaterally revive the practice without bargaining. Under these circumstances, Local 1122 could not restrain and coerce Employer in the unlawful unilateral selection of its representatives. Hence, Local 1122's enforcement of its ban against a defunct practice cannot be found violative of Section 8(b)(1)(B) of the Act. Nor can such action by Local 1122 be found a refusal to bargain in violation of Section 8(b)(3) of the Act, since such action occurred during the term of the bargaining contract and no new request to bargain on the matter of acting supervisors has been made by Employer.

However, whether or not Respondent's promulgating and enforcing a ban against its union-member employees accepting acting supervisory positions violated Section 8(b)(1)(B) of the Act, seems to depend also upon whether Respondent's ban against the practice and the means of its enforcement, are designed to protect a legitimment interest of a labor organization and will not frustrate or tend to frustrate an overriding policy of the Act. In this regard, a careful examination of the appropriate provisions of the Act appears warranted.

The Respondent union is alleged to have violated Section 8(b)(1)(B) of the Act, which section specifically provides as follows:

> Section 8(b)(1) it shall be an unfair labor practice for a labor organization or its agents-to restrain or coerce

(B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjuctment of grievances.

In Florida Power And Light Company v. I.B.E.W. Local 641, 417 U.S. 790, 86 LRRM 2689 (1974), cited by counsel for the respective parties, the court held that an analysis of the language and the legislative history of Section 8(b)(1)(B) of the Act reveals that Congress was concerned about protecting an employer only against union restraint and coersion, in the selection and utilization of his representatives for purposes of collective bargaining or the adjustment of grievances. The Court in Florida Power, supra, went on to say: "Nowhere in the legislative history is there to be found any implication that Congress sought to extend protection to the employer from union restraint or coercion when engaged in any activity other than the selection of its representatives for purposes of collective bargaining and grievance adjustment. The conclusion is thus inexcapable that a union's discipline of one of its members who is a supervisory employee can constitute a violation of Section 8(b)(1)(B) only when that discipline may adversly affect the supervisors conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." In further amplification of the authority to adjust grievances, the Court in N.L.R.B. v. Brown and Sharpe Manufacturing Co., 169 F 2d 331 (1st circuit 1948), held that supervisors authority to reward or to adjust the grievances of their fellow employees, or effectively to recommend such action, should entail the use of independent judgment in collecting, evaluating and considering pertinent data for the purpose of determining the validity of the grievance.

In measuring the evidence of record against the above-cited language of the Act and its underlying policy, it is first observed and found that the evidence does not present an issue as to whether a supervisor or acting supervisor acts as representative for Employer for purposes of collective bargaining. However, a crucial question presented by the evidence is whether supervisors, and more particularly acting supervisors, have the authority and do in fact adjust employee grievances for Employer within the meaning of the Act. An examination of the documentary evidence in this regard clearly reveals that many acting supervisors receive grievances on behalf of the Employer, assign a number to such grievances, present such grievances to the stewart, attend the grievance hearing, and in some instances the records intimate that such acting supervisors heard the grievance. Many of the documents labled "Report of First Step Grievance Review" were marked "No Disposition," "Disposition pending," "Management's position stated by acting supervisor," and some did not contain any evidence of a disposition.

General Counsel's Exhibit No. 23 which consists of minutes of grievances merely stated what decision was made and in many instances such minutes are signed by the acting supervisor. However, the documents do not indicate who made the decision, and to conclude that the decision was made by the acting supervisor would be merely a speculative assumption on the

part of the Administrative Law Judge. In the documents which were marked "Management's position stated," or "presented," it could not be determined in all instances who stated managements position, or more importantly, who resolved the grievance for management. Although General Counsel's Exhibit No. 32 describes what disposition was made of the grievance, it is observed that this routine disposition was made in accordance with established rules governing overtime. Likewise, General Counsel's Exhibit Nos. 41 and 42 describe the resolution of complaints, or noncompliance with special procedure outlined to resolve vacation selection. In both of these situations it would appear that the grievances were routinely resolved by an established business policy or procedure, or by a procedural provision of the collective bargaining contract. In any event these grievances were not shown to have been resolved by an independent exercise of discretion on the part of the supervisor or the acting supervisor. General Counsel's Exhibit Nos. 44 and 46 appear to have been resolved by language in the contract, rather than by any exercise of discretion of the acting supervisor.

In a few exhibits such as General Counsel's Exhibit No. 45, the document indicates that the grievance might have been heard by the supervisor, rather than the acting supervisor, and disposition of the grievance is labeled: "pending." General Counsel's Exhibit No. 47 merely describes the nature of the grievance and indicates that it is to be appealed. The Employer produced only one witness, Mr. Roy Jordan who testified that during the early part of his career of 23 years with Employer, he had served as an acting supervisor on two ocassions and that the duties of an acting supervisor were the same as those of a permanent supervisor. Employer did not produce any other witnesses who testified that more currently, they had served as an acting supervisor and actually had authority to adjust employee grievances which in fact they had exercised.

Additionally, with respect to the question of authority of acting supervisors to adjust grievances, it is noted that while the language of the "Job Functions" of supervisors (Respondent's Exhibits Nos. 2-16) does indicate that supervisors participate in grievance discussions in handling First-Step grievance hearings, it does not state that such supervisors actually adjust grievances. Nor does the language in General Counsel's Exhibit No. 19 show that supervisors actually adjust grievances. When Employer (Mr. Hennessy) was asked what authority does the foreman at First-Step have to adjust grievances and where is that described, the authority, he replied as follows:

> A. They would have the responsibility to adjust grievances themselves on more routine cases.
>
> Q. Who describes what is more routine?
> A. Who describes what is more routine? Well . . . .
>
> THE WITNESS: They do have the responsibility to adjust the more routine cases, and the more complex cases they would discuss with their supervisor or the labor Relations people. Their authority is not spelled out any place to my knowledge, describing which ones are referred and which ones they handled themselves.

Mr. Hennessy also said there is no definition of what is routine and what is not routine and Mr. Roy Jordan, division construction superintendent for Employer, credibly testified that a search of Employer's business records in the western area for all jobs did not disclose any data wherein an acting supervisor had adjusted a grievances (Tr. 169-170). Even Employer (Mr. Hennessy) testified that it could not determine from General Counsel's Exhibits Nos. 23-28 whether or not the supervisor had settled the grievance on his own initiative or if higher managerial authority directed the acting supervisor how to resolve the grievance.

Based upon the foregoing analysis of the documentary and testimonial evidence regarding the duties of acting supervisors, I conclude and find that while Employer contends that supervisors and acting supervisors had and in fact exercised authority to adjust Employee grievances, such evidence is grossly insufficient to support a conclusion that either supervisors or acting supervisors possessed, or in fact actually exercised, such authority. Since acting supervisors did not have nor exercised authority to adjust employee grievances, the Union's (Local 1122) efforts to enforce its ban against its members accepting temporary supervisory positions did not, and could not have interfered with the performance of representatives selected by Employer for purposes of collective bargaining or the adjustment of grievances. In the absence of such interference the union (Local 1122) is free to institute disciplinary action against its members without violating Section 8(b)(1)(B) of the Act. Florida Power and Light Company v. I.B.E.W. Local 641, 417 U.S. 790 (1974). Employer's allegation in this regard should be dismissed.

With respect to the contractual or practice right of Employer to appoint acting supervisors, counsel for the General Counsel argued that since the Local herein is not the exclusive bargaining representative as was the union in Westgate Painting and Decorating Corp., 186 NLRB 964, it does not possess authority to affect changes in existing terms and conditions of employment within the unit. While this argument may be available to the National Organization (CWA), which knew about but did not complain about the Local's action, I cannot precieve Employer assuming such a position when it was Employer who bargained with Local 1122 and thereafter, substituted the nonappointing practice for the prior practice of appointing acting supervisors. I do not concede, as counsel for Employer contends, that since Employer revived its appointment of acting supervisors in 1973-1975, that Local 1122 acquiesced in the revival of the practice because it did not file a grievance under the contract or discipline any of its members who had accepted appointments during such period. Since Local 1122 did not ever retract its opposition to the practice of acting supervisors and continually maintained its ban upon its membership against the practice, it is clear that it was Employer who unilaterally reinstituted the practice. Although Local 1122 did not file a grievance against Employer or sought enforcement of its ban before now, I do not precieve such delayed action on its part as a waiver of its right to rely on the established nonappointing practice, or as an acquiescence in Employer's unilateral reinstitution of the practice of

appointing acting supervisors. Such delay by the Local may very well have been due to a "wait and see" approach to the problem on its part, since it is observed (General Counsel's Exhibit No. 16) that Employer's appointments of acting supervisors were not as numerous or as frequent during 1973-1975 as they were during the years prior to 1969.

With respect to the alleged violation of Section 8(b)(1)(A) of the Act, the union (Local 1122) expressed its concerns with the tendency of the acting supervisor practice to impede the number and frequency of promoting rank-and-file employees to permanent supervisory positions, the presence or participation of its members in grievances, and other concerns comparable to those expressed by the union in Rochester Telephone Company, supra. All of these concerns I find constitute a legitimate interest of a labor organization (national or local). Hence the union (Local 1122) herein sought to safeguard those concerns through the promulgation and enforcement of a ban against its members accepting temporary supervisory positions. Such a rule is unquestionably an internal rule regulating legitimate interests and affairs of the union and its membership. Scofield et. al. v. N.L.R.B., 394 U.S. 423 (1954). As further evidence supporting the realism of its concerns, Local 1122 established that subsequent to the promulgation of its ban on union members accepting supervisory positions, Employer promoted a substantial number of unit employees to permanent supervisory positions within a period of 6 months.

Since the union interest for which the ban on acting supervisor positions was designed to protect is legitimate, and the rule (prohibition) itself is enforced solely through "the internal technique of union fines," neither the rule nor its actual enforcement constitutes restraint or coercion so as to be violative of Section 8(b)(1)(A) of the Act, and the allegations that such is the case should be dismissed.

Although the unit employees who acted as supervisors for Employer within the jurisdiction of Local 1122 were not supervisors for purposes of collective bargaining and adjusting grievances, there is no dispute that otherwise, they possessed and exercised other indicia of managerial authority, and while so doing, were in fact supervisors within the meaning of Section 2(11) of the Act. Since the union rule (prohibition) was prospective, it was applicable to employee Richard Maevie before he accepted the acting supervisor position for which he is now being disciplined by Local 1122.

With respect to the alleged violation of Section 8(b)(3) of the Act, I find that Local 1122 did meet with Employer upon the latter's request, when among other things they discussed the acting supervisor practice which the union (Local 1122) requested be terminated. Employer offered to modify the practice and the union ultimately rejected the offer and demanded abolition of the practice. Although Employer was appraised of the union's demand it expressed no further response, but instead, responded in action by not appointing any acting supervisors

within the jurisdiction of Local 1122. While the appointing practice of acting supervisors has been changed by negotiating or by acquiescence to a nonappointing practice by the parties (Employer and Local 1122), the issue of the practice itself remains a bargainable issue. Although Employer may experience some impact from the enforcement of the union's rule, the rule is not designed to externally regulate the managerial operation of Employer and therefore, it is not inconsistent with the overriding policy of labor law. See Scofield v. N.L.R.B., supra. Consequently, the alleged violation of Section 8(b)(3) of the Act should also be dismissed.

Upon the basis of the above findings of fact and upon the entire record in this case, I make the following:

Conclusions of Law

1. New York Telephone Company, Employer herein, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. (a) Local 1122, Respondent herein, is a labor organization within the meaning of Section 2(5) of the Act.

(b) Communications Workers of America, AFL-CIO, herein called the National Union, or Organization, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in any unfair labor practices, as alleged, within the meaning of Sections 8(b)(1)(A), 8(b)(1)(B) or 8(b)(3) of the Act. 6/

ORDER

The complaint in this matter is dismissed in its entirety.

Dated at Washington, D. C.

Elbert D. Gadsden
Administrative Law Judge

6/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, counclusions and Order and all objections thereto shall be deemed waived for all purposes.

EXCERPTS FROM THE HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE IN BUFFALO, NEW YORK ON JANUARY 19 - 20, 1976.

EXCERPTS FROM HEARING.
Appearances [Tr. 3 - 4].

P R O C E E D I N G S

(10:10 A.M.)

ADMINISTRATIVE LAW JUDGE GADSDEN: All right. This proceeding is in order. This is a formal proceeding before the National Labor Relations Board in the matter of Communications Workers of America, Local 1122 and New York Telephone Company, Case No. 3-CB-2565.

I am Elbert Gadsden, Administrative Law Judge, designated to conduct this proceeding.

We can, at this time enter the appearances for the record beginning with the General Counsel.

MR. MATCHULAT: John J. Matchulat, Counsel for the General Counsel, 111 W. Huron Street, Buffalo, New York.

JUDGE GADSDEN: Last name again, please.

MR. MATCHULAT: Matchulat, M-a-t-c-h-u-l-a-t.

JUDGE GADSDEN: Thank you.

MR. LIPSITZ: For the Respondent, Richard Lipsitz, L-i-p-s-i-t-z, Lipsitz, Green, Fahringer, Roll, Schuller & James, One Niagara Square, Buffalo, New York 14202.

JUDGE GADSDEN: All right. Thank you.

MR. YAKER: My name is Bernard Yaker, I'm attorney for the Charging Party, New York Telephone Company, 1095 Avenue of the Americas, New York City and I don't know if it's appropriate at this time, your Honor, I don't know if it's necessary, but just in case, I would like to make a formal

application to be permitted to intervene and participate fully in the proceeding of this case.

JUDGE GADSDEN: Okay. You have no objection to him intervening do you?

MR. LIPSITZ: I don't have any objection to his intervening. I do object to his term "fully". I'm sure the intervening will be in accordance with the rules, somewhat less fully, but that's a matter of conviction.

JUDGE GADSDEN: Motion to intervene is granted.

MR. YAKER: Thank you.

JUDGE GADSDEN: Before we begin I would like to ask Counsel for the respective parties, do you feel that you have exhausted reasonable efforts to achieve a settlement in this matter?

MR. MATCHULAT: Yes, I do, your Honor.

JUDGE GADSDEN: And Counsel, please approach the Bench, all right. Is there an opening statement?

MR. MATCHULAT: Yes, there is your Honor. However, would it be permissible for me to introduce the formal papers first.

JUDGE GADSDEN: Sure.

MR. MATCHULAT: Your Honor, I offer into evidence the formal papers. They have been marked for identification as General Counsel's Exhibit 1(a) and 1(o), Exhibit 1(o) being an index and description of the entire exhibit. This exhibit

the cluttering of the record with a lot of unnecessary discussions, we might go off the record a moment.

MR. MATCHULAT: All right.

JUDGE GADSDEN: Off the record.

(Discussion off the record)

JUDGE GADSDEN: On the record. You may state on the record now the proposed stipulated amendment.

MR. MATCHULAT: Your Honor, I propose to amend the complaint by deleting the present wording of the complaint in Paragraph 6 to read as it appears in General Counsel's Exhibit 2 on Page 1, under Article 1. With reference to Pages 90 through 92 of General Counsel's Exhibit 2, this would also cause a disregarding ofthe notice in the contention to amend the complaint dated November 20th, 1975, as that notice in contention relates to Paragraph 6.

JUDGE GADSDEN: The stipulation as read in the record, do we have any objection?

MR. LIPSITZ: No, sir.

MR. YAKER: No objection.

JUDGE GADSDEN: All right. Then the stipulation will stand as read.

MR. MATCHULAT: General Counsel's Exhibit 3 for identification.

(The document above-referred to, was marked General Counsel's Exhibit 3 for identification)

* * * * * *

MR. YAKER: Perhaps I could make it easier for Mr. Lipsitz if I suggest that we just substitute the words Respondent and insert the National Union. I think what Mr. Lipsitz is objecting to is that the allegation of 1122, a collective bargaining representative recognized by the Employer. I think he's right. The CWA or the National Union's collective bargaining representative.

MR. LIPSITZ: That's not altogether the reason. Do you want me to explain it off the record and if you want to come back on, we can do it.

JUDGE GADSDEN: Certainly. Do you want to approach the bench? Off the record.

(Discussion off the record)

JUDGE GADSDEN: Back on the record.

Now get what we say on the record while it's hot.

MR. MATCHULAT: Your Honor, I would move to amend the complaint in accordance with the Notice of Intention to amend the complaint, dated November 1975, that with respect to Paragraph 8 of the Complaint, Sub Paragraph (b), to delete all language following the column near the end of the 5th line of Sub Paragraph (b) and insert the period in place of the coma, which exists near the end of the 5th line.

JUDGE GADSDEN: And with that deletion I believe Mr. Lipsitz represented to the Court, during an off-the-record discussion, that he is now able to admit Paragraph 7, 8(a) and

8(b) of the Complaint; is that correct, Mr. Lipsitz?

MR. LIPSITZ: I said that, your Honor, and it's correct to 8(a) and 8(b).

JUDGE GADSDEN: It's correct as to 8(a), 8(b). So you're not denying...

MR. LIPSITZ: I admit 8(a) and 8(b).

JUDGE GADSDEN: Thank you, sir. As to 7?

MR. LIPSITZ: As to 7, you'll note, if you will, that I in Paragraph 6 of my Answer, I stated that I admitted the National Union has been the exclusive representative. Now, I'm going to ask for leave to amend that answer, that portion of the answer, to deny that, your Honor.

JUDGE GADSDEN: In other words, you're changing your answer?

MR. LIPSITZ: I ask leave to do that?

JUDGE GADSDEN: In other words you'd like your answer to remain in the denial of Paragraph 7?

MR. LIPSITZ: I wish to deny Paragraph 7 instead of admitting which I have done,

JUDGE GADSDEN: All right. Paragraph 7 is denied.

MR. LIPSITZ: May I go off the record a minute?

JUDGE GADSDEN: Yes. Off the record.

(Discussion off the record)

JUDGE GADSDEN: Back on the record.

MR. MATCHULAT: Counsel for the General Counsel would propose this amendment at this late date on this particular

* * * * * *

evidence General Counsel's Exhibit 4, an agreement between Communications of America, AFL-CIO and New York Telephone Company. It states at the bottom, effective May 22nd, 1967, as amended July 29th, 1968.

JUDGE GADSDEN: Go to the next one, please.

MR. MATCHULAT: Also, I offer into evidence as General Counsel's Exhibit 5, an agreement between New York Telephone Company and Communications Workers of America, AFL-CIO, District 1. It states on the cover, effective February 27th, 1967. I also offer into evidence as...also offer into evidence General Counsel's Exhibit 6, an agreement between the New York Telephone Company and the Communications Workers of America, AFL-CIO, District No. 1. The effective date, February 27th, 1964. I offer that into evidence at this time.

JUDGE GADSDEN: Do I hear any objections to General Counsel's Exhibits 4,5 and 6?

MR. LIPSITZ: No objection.

MR. YAKER: No objection.

JUDGE GADSDEN: General Counsel's Exhibit 4, 5 and 6 are received into evidence.

(The documents above-referred to, heretofore marked General Counsel's Exhibits 4,5 and 6, were received into evidence)

MR. MATCHULAT: Your Honor, at this time I propose to stipulate that the negotiations of all collective bargaining

agreements covering all employees in the unit have, since 1961 taken place on a state-wide basis between the National Union and the Employer.

JUDGE GADSDEN: Is that agreeable to you, Mr. Lipsitz?

MR. LIPSITZ: So long as I don't foreclose my opportunity to offer testimony.

JUDGE GADSDEN: The Court already stated that it will give you an opportunity to prove any negotiation between the local and the employer.

MR. LIPSITZ: Thank you. Since it was another stipulation, I want you to make sure that...I wanted to make sure that I don't stipulate that away, your Honor.

JUDGE GADSDEN: Should the Court retract its pledge to you on that and you so notice, be rest assured of that.

MR. LIPSITZ: Thank you. With that reservation I'm willing to stipulate to it.

JUDGE GADSDEN: The stipulation is received as read.

MR. MATCHULAT: At this time, your Honor, I'll have marked another document. Mark this as General Counsel's Exhibit 7.

(The document above-referred to, was marked General Counsel's Exhibit 7 for identification)

MR. MATCHULAT: At this time, your Honor, I offer into evidence as General Counsel's Exhibit 7, a document entitled Communications Workers of America AFL-CIO, a constitution as amended June 1974.

* * * * * *

into evidence as General Counsel's Exhibit 13, a one-page document, date appearing thereon July 8th, 1975, addressed to Mr. Richard MacVie. The signature is Rita Biondo, appearing on the bottom. And also I propose a stipulation with respect to this document, that it was sent by Respondent and received by Mr. MacVie.

MR. LIPSITZ: I do not know whether it was received. Other than that I join in the stipulation.

JUDGE GADSDEN: The stipulation is received as read and General Counsel's Exhibit 13 is received into evidence.

(The document above-referred to, heretofore marked General Counsel's Exhibit 13 was received into evidence)

MR. MATCHULAT: With respect to the receipt of General Counsel's Exhibit 12 and 13, your Honor, I would seek to inquire; perhaps not the best way put as to whether or not Mr. Lipsitz would object, or has any reason to believe that Mr. MacVie did not receive these documents.

MR. LIPSITZ: I have no reason to believe that he hasn't received them.

MR. MATCHULAT: At this time General Counsel would propose to stipulate that the charges are still pending against Mr. Richard MacVie.

MR. LIPSITZ: Yes. I'll join in that stipulation.

JUDGE GADSDEN: Is that the end of it?

MR. MATCHULAT: Yes, your Honor.

JUDGE GADSDEN: All right. The stipulation is received.

MR. MATCHULAT: Also I propose to stipulate, your Honor, that the ban referred to in the notices of 1969 and 1975; in other words, General Counsel's 9 and 10 has not to date been rescinded.

JUDGE GADSDEN: And you say...you're talking about the restriction?

MR. MATCHULAT: Yes.

JUDGE GADSDEN: Mentioned in those communication?

MR. MATCHULAT: Yes, your Honor.

JUDGE GADSDEN: All right, sir.

MR. LIPSITZ: Yes, I'll join in the stipulation.

JUDGE GADSDEN: The stipulation is received as read.

MR. MATCHULAT: General Counsel's Exhibit 14 for identification.

(The document above-referred to, was marked General Counsel's Exhibit 14 for identification)

MR. MATCHULAT: At this time, your Honor, General Counsel proposes to stipulate into evidence as General Counsel's Exhibit 14, a one-page document which states at the top right-hand corner, "Union Proposal" and the number there is illegible. I believe it was No. 2, but I know it is not legible on the page itself. I propose this into evidence with the heading, it's Article 9, with the sub heading "Wage Treatment for Promotion Assignments". I

propose that into evidence at this time.

JUDGE GADSDEN: What document is this?

MR. MATCHULAT: It would be General Counsel's Exhibit Union Proposal.

JUDGE GADSDEN: Okay.

MR. MATCHULAT: And prior to actually offering it, I should offer these proposed stipulations: That this is a proposal presented by the National Union at its negotiations with the Employer that occurred in 1968. That's in reference to Paragraph designated 9.09, thereon, that 9.09 was presented at the 1968 negotiations, and that 9.09 was not accepted by the Employer at the 1968 negotiations, and that 9.09 was not thereafter introduced in the negotiation on the 1971-1974 collective bargaining agreements.

MR. LIPSITZ: Yes, I'll join in that stipulation.

JUDGE GADSDEN: The stipulation is received as read. General Counsel's Exhibit 14 is received into evidence.

(The document above-referred to, heretofore marked General Counsel's Exhibit 14, was received into evidence)

MR. MATCHULAT: I also propose to stipulate that Paul McGavis and Rita Biondo are agents of the Respondent within the meaning of Section 313 of the Act, or at the material times.

JUDGE GADSDEN: The names again, please.

MR. MATCHULAT: Paul McGavis and Rita Biondo.

MR. LIPSITZ: Well, I've denied that, your Honor.

JUDGE GADSDEN: I beg your pardon.

MR. LIPSITZ: I have denied that, your Honor.

JUDGE GADSDEN: Yes, is that a proposed stipulation?

MR. MATCHULAT: Yes, it is, your Honor. May we go off the record for a moment?

JUDGE GADSDEN: Off the record.

(Discussion off the record)

JUDGE GADSDEN: Back on the record.

MR. MATCHULAT: During an off-the-record discussion, I spoke to Mr. Lipsitz as to the proposed stipulation, and Mr. Lipsitz, may I defer to you what your statement was to me during the off-the-record discussion.

MR. LIPSITZ: You want me to say it?

MR. MATCHULAT: Yes.

MR. LIPSITZ: I said that I thought what Mr. Matchulat had to have in order to prove his case, is the action that is reflected in General Counsel's Exhibits 12 and 13 and the action taken by the Respondent and therefore he needs not prove that McCavis and/or Biondo was agents of the Respondent. That I was willing to concede that action taken was an action of the Respondent. I'm not willing to stipulate to Biondo or McCavis being agents of the Respondent.

JUDGE GADSDEN: Well, they're agents by the action that they did take.

MR. LIPSITZ: That's a conclusion somebody arrived at. I'm stipulating that they're agents within the meaning of the Act. That's all. He asked me to stipulate that they are.

JUDGE GADSDEN: I understand Counsel. I simply said that you are stating that the Respondent is responsible for whatever action they took.

MR. LIPSITZ: There's no denial of that.

JUDGE GADSDEN: They are agents of each of the actions they did take.

MR. LIPSITZ: I'm willing to concede that action.

JUDGE GADSDEN: Are you denying that?

MR. LIPSITZ: No. I said I concede that action taken is the reaction of the Respondent.

JUDGE GADSDEN: But you're not conceding they're agents within the meaning of the Act?

MR. LIPSITZ: Correct. And I don't think he has to prove that but that's up to him to decide.

MR. MATCHULAT: I accept Mr. Lipsitz' interpretation.

JUDGE GADSDEN: All right. Would somebody state clearly on the record what that stipulation is? I don't want to misconstrue it.

MR. LIPSITZ: I'm willing to stipulate that the action reflected in General Counsel's Exhibit 12 and 13 is the action taken by the Respondent.

JUDGE GADSDEN: In this case?

MR. LIPSITZ: In this case.

JUDGE GADSDEN: And you agree to take that?

MR. MATCHULAT: I agree to agree to that stipulation as it affects 12 and 13; yes, your Honor.

JUDGE GADSDEN: All right. The stipulation is received as read on the record.

MR. LIPSITZ: Put your mind at ease, your Honor, and at no time are we prepared to argue that this was intra-union or beyond the scope of the authority of the union to do this. We concede that whatever happens here the union is responsible for if in deed there is any responsibility, which we don't enforce because of legal reasons.

JUDGE GADSDEN: All right, thank you, sir.

MR. LIPSITZ: The union, meaning the Respondent. I'm sorry.

JUDGE GADSDEN: Yes, sir.

MR.MATCHULAT: Your Honor, I would also propose to stipulate, because I believe the Complaint shows an article and...pardon me. The first paragraph, that the charge was filed and served on July 24th, 1975, and on July 25th, 1975, and Respondent contends that he didn't have knowledge at that time. I wonder if we could stipulate that the charge was filed?

MR. LIPSITZ: Cee, you're asking somebody simply when the

MR. MATCHULAT: Your Honor, I further propose to stipulate, with respect to General Counsel's Exhibit 9 and 10 that both notices, General Counsel's Exhibit 9 and 10, both were posted on the bulletin board at the Employer's facility wherein such notices are normally posted.

MR. LIPSITZ: Yes.

JUDGE GADSDEN: All right. Thank you. That was a stipulation.

MR. MATCHULAT: Yes, it was your Honor.

JUDGE GADSDEN: Thank you.

MR. MATCHULAT: Can I have this marked as General Counsel's Exhibit 11?

(The document above-referred to, was marked General Counsel's Exhibit 11 for identification)

MR. MATCHULAT: Your Honor, at this time I would propose to offer into evidence as General Counsel's Exhibit 11, a one-page document which is dated at the top, July 1975, with a signature Rita Biondo. I propose to offer this into evidence at this time, with the additional stipulation that this particular document was filed with the Respondent on or about July 3rd, 1975.

MR. LIPSITZ: No objection. So stipulated.

JUDGE GADSDEN: All right. The stipulation is reflected as stated, and General Counsel's Exhibit 11 is received into evidence.

* * * * * *

JUDGE GADSDEN: Early in the morning.

MR. LIPSITZ: But to continue beyond 5:00 or even a little beyond then is difficult because I need an opportunity to get back and at least do several small tasks in my office for about 15 minutes before 5:00.

JUDGE GADSDEN: All right. Then we'll be in recess for 15 minutes.

(Whereupon a short recess was taken)

JUDGE GADSDEN: Back on the record. You may proceed, Counsel.

MR. MATCHULAT: Your Honor, at this time Counsel for the General Counsel calls Mr. James Hennessy to the stand. Whereupon,

JAMES HENNESSY

was called as a witness by and on behalf of the Counsel for the General Counsel and having been first duly sworn, was examined and testified as follows:

JUDGE GADSDEN: Be seated.

DIRECT EXAMINATION

Q. (By Mr. Matchulat) Mr. Hennessy, give your address to the Court Reporter.

A. James E. Hennessy, home address, 41 Rockford Drive, West Nyack, New York.

Q. Mr. Hennessy, are you currently employed by New York Telephone Company?

A. Yes, I am.

Q. What position do you presently hold?

A. My current title is General Manager of the Western area.

Q. When did you assume that position?

A. Last Thursday.

Q. Prior to last Thursday what was your position with New York Telephone Company?

A. Assistant Vice-President, Human Resources, State Region.

Q. And how long have you held the position of Assistant Vice President of Human resources in the State Region?

A. September 1974.

Q. Mr. Hennessy, will you please describe what you meant by the State Region?

A. The New York Telephone Company is divided into two main parts, New York City Region, consisting of three burroughs, New York and all the rest of the State, which we call the State Region, and within the State Region, that's also divided into two parts, the Upstate Territory and the suburban territory.

Q. And what is referred by the Upstate territory?

A. It includes the western area, Buffalo area, and it includes Niagara Falls, Olean; the central area, Syracuse, Binghamton, Watertwon, and North East Area, which includes Albany, Utica and part-way down the Hudson River, and up to Canadian Border, again.

Q. Would you please describe your duties and responsibilities?

MR. LIPSITZ: Which position?

MR. MATCHULAT: Let me withdraw that question.

Q. (By Mr. Matchulat) Would you please describe what you refer to as the Suburban Region?

A. Sub Territory, that geographic,Long Island, outside the City of New York, Westchester and Rockford County, and another in the outer mid-Hudson area, south of Albany County.

Q. Mr. Hennessy, would you please describe the duties and responsibilities as Assistant Vice-President, Human Resources in the State Region?

A. Yes. I was responsible for what was generally termed the Personnel function within the State. We generally include the Labor Relations activities, the Benefits, offices, affirmative action programs, pioneering programs, employment and all aspects of personnel within the region.

Q. Mr. Hennessy, how long have you been employed by New York Telephone?

A. Since 1958.

Q. Would you please relate the history of your employment, giving the titles you held, the years you held those titles and the locations which you held those titles?

A. Starting in December of 1958 in Syracuse, New York, as Plant Department Trainee involved in learning several parts of the Plant Department. After about a year in

Syracuse I was transferred to Binghamton, New York, still as a trainee, where I completed my training and was given my first supervisory assignment, that of Building Foreman in Binghamton, and Endicott Areas, that was in May of 1960. In December of 1960 I was assigned as Service Foreman in Binghamton, being responsible for the installation and repair activity within certain sections of Binghamton. I was then transferred back to Syracuse in May of 1961 as Staff Supervisor in the Motor Vehicle Department. In the fall of 1961 I was assigned as a Personnel Supervisor, responsible for dealing with and participating in second step grievance hearings, and also attendance program. In March of 1962 I was assigned as a Plant Chief in Geneva, New York and stayed there until July of 1963 when I was assigned to the Sales Department in Syracuse, involved with data communication sales. In August of 1965 I was assigned to the Niagara Falls District which is part of the Western Area, as District Plant Superintendent, responsible for activities of installation, repair, central office switching in that district. In May of 1967 I was transferred to Newburgh, New York, as a District Operations Manager, retaining those same plant duties and in addition, responsible for traffic and commercial department operations. October 1st,1968 I was promoted to Division Plant Superintendent in the Western Area and stayed at that position until November 1st.

1971 at which time I was reassigned to White Plains as a Director of Corporate Learning Center until November 1st, 1973, when I was appointed to General Manager of the Mid-Hudson Area and retained that until I became Assistant Vice-President, Human Resources.

Q. Mr. Hennessy, referring to the period from October 1st, 1968 to November 1st, 1971 while you were Division Plant Superintendent in the Western Area, will you please describe your duties and responsibilities?

A. Yes, I was responsible for all of the installation and repair activity, Central Office Switching Services provided and what we call a Plant Repair Service Bureau that provide repair service and assignment facilities in the Western Area, which I mentioned before, including everything from Niagara Falls to Olean. In that capacity I was responsible for the efficient effect of production in those services for employee relations and labor relation activities.

Q. During that period, Mr. Hennessy, with respect to labor relation duties, do you deal with any locals of the Communications Workers of America?

A. Yes, the three locals in the Western Area, 1117 Niagara Falls, 1115, Hamburg-Olean Area and 1122 in Metropolitan Buffalo.

Q. Mr. Hennessy, during that period while you were Division Plant Superintendent in the Western Area, were union

employees used to fill Acting Supervisory positions?

A. Yes, they were.

Q. And under what circumstances were union employees used to fill Acting Supervisory positions?

A. Well, under the circumstances that there was a need, because of vacation coverage, because of a foreman was out ill on disability, of course it may be expanded on a temporary basis. They may be cut over new equipment and need supervision for a short period of time, and those were the primary reasons there would be a need for an Acting Foreman. And of course always it provides us an opportunity to see craft people in a different role, in a mangerial role for a short period of time.

Q. Mr. Hennessy, you spoke of a foreman position, what type of position were union employees utilized in in an acting capacity?

A. Well, we had many classifications of foremen, service foremen, foremen responsible in the installation, repair installation.

MR. LIPSITZ: I don't think this is responsive, what capacity as foreman. I hear the witness start describing the... all the foremen's positions. I think what the record should be, is clearly responding a record, or describing all foremen's positions. I don't think he wants to do that. I want to make sure the record is clear.

Q. (By Mr. Matchulat) Perhaps my question should be what

foreman position did union employees act in in a working capacity?

A. They served all different various titles of Line Foremen, Service Foremen, Central Office Foremen and Bureau Foreman, and so forth, in all of those positions.

Q. Mr. Hennessy, what procedure was used in selecting an employee for an acting supervisory position?

A. An employee would be recommended by his foreman, and recommended by the foreman, usually to the second line supervisor that is his immediate supervisor who would incur or not and the offer would be made to the individual to be acting foreman.

Q. And how is this communicated to the union employee who is to be selected as an acting foreman?

A. Well if it was agreed to, then the permanent foreman would go back to the individual and ask that person if they would accept this job as Acting Supervisor, and describe what is involved, with the length of time and why it was required and so forth.

Q. During the period between October 1968 and November 1st, 1971 while you were Division Plant Superintendent in the Western Area, what were the functions and responsibilities of permanent full-time supervisors?

MR. LIPSITZ: I'm going to object to that unless he defines which class supervisors he knows and I think you

probablyyknow, or I understand you don't know that the supervisors range from the president of the corporation down to the lowest line supervisor.

MR. MATCHULAT: I was speaking in the question of what were the functions and responsibilities of the permanent first line supervisors as the foremen that you've designated or named before their duties and responsibilities.

THE WITNESS: The responsibility of first line supervisors involve planning the workload and assigning it to individual craftsmen to perform that work, checking later tomake sure the work is done productively, that it is done of high quality, of insuring that people meet the attendance and tardiness standards. It involves coaching, training of individuals and it involves receiving and hearing grievances as well as settling any informal problems that arise.

Q. (By Mr. Matchulat) During the period of time that you were Division Plant Superintendent in the Western Area, did First Line Supervisors have any responsibility with respect to overtime assignments?

A. Yes, they also were responsible for determining the needs for overtime and assigning that to individuals as required.

Q. During that period did the First Line Supervisors; when you said the period in, you meant the period that you

were in the Western Area as the Division Plant Superintendent. Did the First Line Supervisors have any authority with respect to discipline of employees?

A. Yes. The Foreman would be responsible for the insuring that the actions of the employees were proper and that they were not to either take disciplinary action or effectively recommend what discipline would be appropriate, which then would be approved by higher levels.

Q. Mr. Hennessy, during the period you were in the Western Area as Division Plant Superintendent, what duties and responsibilities have the Acting Supervisors?

A. They would be generally the same as the permanent Supervisors.

Q. And with respect to the authority of Acting Supervisors, how did this compare with this of the full-time Supervisors?

A. Well, it would be generally the same.

Q. Was the amount or the method of or the amount...pardon me, the compensation in any manner different for union employees while they served in an Acting Supervisor Capacity?

A. Yes, they were given an additional amount of money per week while they served in that acting capacity. Currently it's calculated on 6% of the permanent foreman's top pay for that area, and that amount on a per week basis would be added to the pay of the person who was serving as Acting Supervisor.

Q. Prior to your assuming the position of Division Plant Superintendent in the Western Area and while you've been...and during the time that you were first employed by New York Telephone Company, did the Employer utilize Acting Supervisors, or union employees as Acting Supervisors in other areas where you worked?

A. Yes, all of the areas that I have testified earlier where they have been used as Acting Supervisors.

Q. And when did you first observe this practice or use of employees in Acting Supervisory positions?

MR. LIPSITZ: Your Honor, I thought I stipulated as to what he would testify to in that respect. You know if he wants to go into it that's perfectly all right. Then there is no need to ask me to stipulate. He's talking about the time in which General Counsel's Exhibit 16 accurately and substantially reflects what's in the Company's records. He knew when he was asking that during that time and those places they used Acting Foremen.

JUDGE GADSDEN: Well, the fact that you stipulated to the date that it was collected, the compilation; I don't think it precludes him from asking some questions to it.

MR. LIPSITZ: All right.

JUDGE GADSDEN: In other words I think that some of the testimony as I hear it adds to the compilation. Although I have not seen it it seems to be a description of how it

was used.

MR. LIPSITZ: I made no objection to that testimony. I am now objecting to the question which is exactly what I stipulated to.

JUDGE GADSDEN: I don't conceive it to be exactly what was stipulated. Am I correct on that, Counsel?

MR. MATCHULAT: I believe that the answer would indicate that the documents of the compilation would not extend to his testimony.

JUDGE GADSDEN: This is what I said. That's my understanding. I don't know what's in the documents but I would assume this is the person who was overseeing much of the activity and he's in the position to tell something about the kinds of duties they perform, the extent of supervisory action engaged in and I don't know what the document...at least I don't think that's a reason for objecting to the question. Objection is overruled.

Q. (By Mr. Matchulat) The question was, Mr. Hennessy, when did you first observe use of union employees in Acting Supervisory positions?

A. From the time I started with the Company.

Q. That was when?

A. 1958.

Q. Was the use of Acting or Union employees as Acting Supervisors used in all areas where you worked, between the

time you started and the time you came into the area as Division Plant Superintendent?

A. Yes.

Q. Mr. Hennessy, prior to your assuming the Division Plant Superintendent position in October of 1968 from the position you held was the utilization of union employees as Acting Supervisors done under the same circumstances as it was done in the Western Areas during the period of time you were in the Western Area as the Division Plant Superintendent?

MR. LIPSITZ: Excuse me. Let me hear that question again, please.

Q. (By Mr. Matchulat) Referring to the time...

MR. LIPSITZ: I want to hear the question. You're going to ask another one. I don't object, but I ask to hear the one you asked.

MR. MATCHULAT: Would you like to have it read back?

MR. LIPSITZ: That's what I interrupted to ask.

JUDGE GADSDEN: The question may be read.

(The pending question was read back by the Reporter)

MR. LIPSITZ: Well, the witness did not say whether he understands the question. Is he talking about the duties and the responsibilities; is that what is meant by circumstances. That's what bothers me about the question.

MR. MATCHULAT: I can rephrase the question.

JUDGE GADSDEN: The question is posed to the witness.

I'll let the witness respond, if he understandsthe question.

THE WITNESS: My answer to the question is yes.

Q. (By Mr. Matchulat) And referring to the period of time prior to you assuming the Plant Division Superintendent position in the Western area, referring to the period before that, were the union employees used as Acting Supervisors for the same reasons that union employees were used in the Western Area during the period of time that you were in the Western Area?

A. Yes, they were.

Q. Prior to your becoming Division Superintendent in the Western Area, did the responsibilities of persons in first line supervision in anyway differ from the responsibilities of first line supervision in the Western Area between 1968 and 1971?

A. No, they did not.

Q. Now, in the years prior to your becoming Division Plant Superintendent in the Western Area did the method of payment of union employees, when they were Acting Supervisors, did that differ from the method of payment that they had while they were in the craft?

A. It differed from what they received in the craft. At that time they received a percentage increase, a 10% increase instead of the formula I described before, the

6% of the top basis, but they did receive a differential for being Acting Supervisors. It was calculated somewhat differently.

Q. Now, in your experience, prior to the Division Superintendent in the Western Area, did the duties and responsibilities of Acting First Line Supervisors in anyway differ from the duties and responsibilities of Acting First Line Supervisors in the Western Area while you were in the Western Area?

A. No, they did not.

Q. Now, do you know whether since you left the Western Area in late 1971, the New York Telephone Company has utilized the union employees in an acting supervisory position; employees in another part of the State?

A. Yes, they have.

Q. Since you left the Western Area and have been involved in other parts of the State, under what circumstances of Acting Union Employees have been utilized as Acting Supervisors?

A. In the same way I described earlier, as it happened in the Western Area.

Q. And for the same reasons?

A. Yes.

Q. And did the duties and responsibilities of the person, namely the first line supervision in other areas of the State that you've seen 1971, does the duties and responsibilities

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A. Yes. Under my direction, similar lists were prepared for the suburban territory, part of the State Region and the New York City Region.

Q. And would you please describe what records were utilized as far as the preparation of the data?

A. Yes. The same records were utilized in the Upstate territory, that is each district office goes through all the payroll records for those people that are still non-managerial as well as for the management people who might have had this in the past, acting management assignments. With a review of records and preparation of this list these lists and the District Office, probably 200 or 300 District Offices scattered throughout the State where those records are kept.

Q. Records, referring to what records?

A. The official company records.

Q. When you say payroll, are you referring to the list or the records?

A. The individuals' cards, which contain the basis information. The name, location, home address,social security number and also it includes every assignment that is titled that that individual had, the dates they have had those titles, the begining date and the ending date, the rate of pay while they were in those titles.

Q. And approximately how many employees were in the unit,

the bargaining unit with the State?

A. There are probably 30 throughout the State in the bargaining unit.

Q. And are these payroll records or payroll cards kept in the ordinary course of business?

A. Yes, they are.

Q. And where are they retained?

A. In the District Office.

Q. And how many District Offices are there throughout the State?

A. 200 to 300, approximately.

Q. And did you communicate with those District Offices?

A. I did communicate with my subordinate with all the District Offices to prepare these summaries.

Q. Will you please relate which information you asked them to prepare?

A. I asked them to prepare from these records, going back to the early 60's, a list of all of the people who have served as Acting Supervisors, and indicate them by name, their permanent title, the title they were acting in and the period of time in which they acted.

MR. MATCHULAT: Can we go off the record for a moment?

JUDGE GADSDEN: Off the record.

(Discussion off the record)

JUDGE GADSDEN: On the record.

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MR. MATCHULAT: Will you please mark this as General Counsel's Exhibit 17, all three copies; right on the top.

(The document above-referred to, was marked General Counsel's Exhibit 17 for identification)

MR. MATCHULAT: General Counsel's Exhibit 18 for identification.

(The document above-referred to, was marked General Counsel's Exhibit 18 for identification)

Q. (By Mr. Matchulat) Mr. Hennessy, was information forwarded to you pursuant to your request for review of records for the various offices?

A. Yes, it was.

Q. And did you receive information from offices within the suburban territory?

A. Yes.

Q. Now what locals to your knowledge have union members in this suburban territory?

A. Well, two locals on Long Island, Nassau, and that's 1102 and 1108. Westchester which is 1103. Rockingham 1107 and Upper Hudson which is 11020.

Q. Mr. Hennessy, I show you what has been marked as General Counsel's Exhibit 17, and ask if that is the information which is prepared for you or under your direction?

A. Yes, this is the information.

Q. Was this prepared from payroll records kept in the

ordinary course of business?

A. Yes, it was.

Q. Mr. Hennessy, I show you under the cover page...under the first page there appears to be paper-clipped a group of papers. Now, does that constitute a summary as was presented in the Upstate New York Area?

A. It's a summary. It's slightly different format than the Upstate Summary, but again it shows the summary by locals. It includes each year, this time it states it in chronological order, not reverse. Parts of the operation is installation, repair, outside plant and so forth. And it shows all those titles when they were acting supervisors, and it shows the number of occasions that it occurred, rather than both the number of occasions and the number of different people. It shows the number of occasions. That's on the summary sheet.

Q. Now, with respect to the information on the summary sheet, is that information further amplified upon in another area of General Counsel's Exhibit 17?

A. Yes. The paper clips beyond that are all of the individuals who assumed acting supervisory roles in that period. By name, by location, the title they came from, the title they were acting in,and again the dates,the inclusive dates which they acted. Again, that is by local for that period. All of the names for each local, there is

a separate paper clip section.

Q. Okay. Thank you.

MR. MATCHULAT: Your Honor, I offer General Counsel's Exhibit 17 for identification into evidence.

MR. LIPSITZ: I would like to examine the witness on the exhibit for a moment, your Honor.

EXAMINATION VOIR-DIRE

Q. (By Mr. Lipsitz) Mr. Hennessy, forgetting about the summary sheets for a moment. The information contained on the sheets, after a summary of the sheets on 17, are those any of the records of the company or the information from the records of the company?

A. Those are information from payroll records of the company.

Q. No part of Exhibit 17 is a copy of an actual record of the company; is that correct?

A. Correct.

MR. LIPSITZ: Your Honor, I object to these your Honor, on the grounds these are not part of the exception to the Hearsay Rule. These aren't evidence. These are summaries of evidence. And while it's perfectly true that I can stipulate, as I did with respect to 16, that is the summary accurately and substantially reflects the records due, because I had an opportunity to verify that conclusion in respect to this. This is not the evidence and this witness in

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objection and admit the document. That's Exhibit 17.

I would appreciate it if you would make your preliminary examination with respect to other exhibits brief.

Q. (By Mr. Matchulat) Mr. Hennessy, was the information...

MR. LIPSITZ: I'll save time. I'll stipulate that the same questions will be asked and the same answers will be received and that you will make the same ruling.

MR. YAKER: I will withdraw any statement or comments that I made before.

JUDGE GADSDEN: All right.

MR. MATCHULAT: Can I have this marked General Counsel's Exhibit 18?

Q. (By Mr. Matchulat) I show you what has been identified as General Counsel's Exhibit 18...

JUDGE GADSDEN: Do you have others there, too?

MR. MATCHULAT: No, I don't.

JUDGE GADSDEN: Of the same nature?

MR. MATCHULAT: No.

JUDGE GADSDEN: This is the last one?

MR. MATCHULAT: Yes. There will be other documents, but not related to this issue.

JUDGE GADSDEN: I'm referring only to this compilation information. This is all of the compilation information?

MR. MATCHULAT: Yes, your Honor.

Q. (By Mr. Matchulat) Mr. Hennessy, will you please

describe what General Counsel's Exhibit 18 purports to be?

A. Yes. This is a list of people who have acted as supervisors in the New York City Region through the same period and again it describes by name the titles that they came from and the titles in which they had as Acting Supervisors and the period of time in which they acted throughout the New York City Region.

Q. Now, Mr. Hennessy...

MR. MATCHULAT: Your Honor, I offer General Counsel's Exhibit 18 into evidence.

JUDGE GADSDEN: I think you want to ask him if his testimony would be essentially the same with respect to the other exhibits.

Q. (By Mr. Matchulat) Would your testimony with respect to the information to the City Region be the same as which you testified with respect to Upstate and Suburban Areas?

A. Yes,it would.

MR. MATCHULAT: Your Honor, I offer General Counsel's Exhibit 18 into evidence.

MR. LIPSITZ: I have the same objection, your Honor, and I assume that if I were allowed to ask questions on the offer of the exhibit, that the witness would answer the same way with respect to the questions as to the way he answered. I'm in a position, possibly to filing an exception to this ruling.

* * * * * *

office?

A. In this particular case, he would have had someone working directly for him to make this search of their records. This did not involve going out to all the District Offices. These records are maintained, as well as the District, in a central point in Albany.

Q. Is that where the records are that Mr. Kelley used, or had someone at his direction used?

A. Correct.

Q. These are not of course the records, these are the abstracts from the records, is that correct?

A. Correct.

Q. On the basis of who, did somebody advise Mr.Kelley; looking at the four names, can you remember or give an answer to the second step...I withdraw the second step, give an answer to the grievant?

A. I'm sorry. Would you repeat that.

Q. I'll withdraw the question. Look at Mr. Currier, the four names on the list and tell me on the basis of what information that was given to Mr. Kelley, by someone else who looked at some document? Does this exhibit contain the information that Mr. Currier gave an answer?

A. The minutes from which the information is summarized, would indicate that.

Q. And who prepared those minutes?

A. The individual involved.

Q. What individual?

A. That's Mr. Currier.

Q. Go ahead.

A. If there was another individual in that same grievance; in other words, two people attended the grievance, one would attend to the minutes.

Q. Youdon't know who prepared the minutes?

A. At this particular time I have to look as to who prepared the minutes.

Q. Are the minutes given to the union for verification?

A. No, they are not.

Q. If I asked you the same question to each name that appears here with respect to giving the answer to the grievance, you wouldn't be able to provide me anymore enlightenment than what you have already provided me. Look at the minutes that are prepared by one participant; the minutes are not given to the union for their examination?

A. I would give you the same answer.

MR. LIPSITZ: Your Honor, if the other documents are not records, these certainly aren't records, and not only that, there is no way of our anticipating, or being told not that we're entitled to, all proof for the evidence that comes before this NLRB Case. We can't have E.B.T's and we only in a sense prepare on the basis of what we think

is going to be produced. We're not entitled to know what the witness is going to provide evidence for, to what the evidence is. But this is not the evidence; neither is the witness' testimony evidence or those pieces of paper. And I'm not entitled to know in advance as to what the evidence is going to be. We certainly not ought to be concerned or confronted with pieces of paper which are not evidence.

JUDGE GADSDEN: What is the purpose of this document, Counsel?

MR. MATCHULAT: The purpose, your Honor, is to indicate or disclose that Acting Supervisors have participated in accepting grievances, adjusting grievances, or at least being involved in the grievance procedure. And this was done upon a review of the records of these grievance numbers, which are numbers here, which records are kept in the ordinary course of business.

JUDGE GADSDEN: What are you offering it for?

MR. MATCHULAT: For the 8(b)(1)(b) allegation, your Honor. In support of [illegible].

JUDGE GADSDEN: Spell out what you're talking about. Specifically, what are you offering that document for?

MR. MATCHULAT: Specifically for, your Honor, to indicate or to disclose that individuals who have acted as supervisors, at least in recent years have been involved in adjustments of grievances at least locally as far as

accepting grievances and being participants in the grievance procedure, which to me, as I understand is sufficient to make an individual a representative of the Employer for the purpose of Section 8(b)(1)(b).

JUDGE GADSDEN: You heard the basis of the objection of Mr. Lipsitz here a few minutes ago, challenging portions of this document, statements of the document. You heard his objection?

MR. MATCHULAT: Yes, I did, your Honor.

JUDGE GADSDEN: Do you have a response to that objection?

MR. MATCHULAT: Yes, I do, your Honor. I believe that this document...

JUDGE GADSDEN: Where is Mr. Kelley located?

THE WITNESS: His office...he has a dual office in Albany and Utica.

JUDGE GADSDEN: And I do think that Mr. Lipsitz has a valid basis for objecting to this document. Why is Mr. Kelley not here to testify?

MR. YAKER: Your Honor, may I make a statement in response to that?

JUDGE GADSDEN: Yes.

MR. YAKER: This document was prepared on the same basis that General Counsel's Exhibit 16, 17 and 18 were prepared.

MR. LIPSITZ: No it wasn't.

MR. YAKER: Mr. Hennessy asked his subordinates, the same way you asked your subordinates to prepare other documents. Look at the company records that Mr. Kelley brought in. They were prepared in the same manner, he asked his subordinates to prepare those records. Now,look at the company records. Now, the minutes, each grievance, each company grievance, and the company records, which copies are kept in the usual course of business.

MR. LIPSITZ: Bring them in.

MR. YAKER: Everytime there is a grievance heard at various steps, there are minutes maintained and they are maintained by the company, but more important, your Honor, and thisis that the union has the same records. If the union disputes anyone of these items in this thing they readily verify...

JUDGE GADSDEN: Am I going to entertain a case, itself on admissions of this document? Now, I asked specifically why were you offering it. If you are offering it for the truth of everything in the document; well, I think Counsel for the Respondent has some basis here.

MR. YAKER: Well, then your Honor, are you asking us to introduce everyone of the records of some 30 grievances going back to 1962. There are first and second steps on this thing.

JUDGE GADSDEN: No,no. If you simply are offering that

to show that the particular persons named here are acting supervisors and participate in grievance procedures and still stopping there without going to refusal or for extraction of minutes.

MR. YAKER: That's the sole purpose of introducing it.

JUDGE GADSDEN: Well then the other matter in here; the truth of this recordation in the minutes would not be necessary.

MR. YAKER: We withdraw that aspect of this. All the items and the nature of the grievance may be withdrawn but the supervisor, acting supervisor.

JUDGE GADSDEN: That's all you have to say?

MR. LIPSITZ: Excuse me. What portions, your Honor, may I ask are offered to be withdrawn by way of General Counsel doing this. I understand that General Counsel is in charge.

JUDGE GADSDEN: I see Mr. Matchulat nodding his head affirmatively.

MR. MATCHULAT: I was, your Honor.

MR. LIPSITZ: May I inquire then, sir, of what portion of this exhibit is being withdrawn?

JUDGE GADSDEN: You're entitled to that and certainly I want to make it very clear on the record. All right, sir.

MR. MATCHULAT: Under Section "Nature of Grievance", for example on each one of these.

MR. LIPSITZ: And how about the next column with the

three sub columns, "Participated" and "Grievance", are they being withdrawn?

MR. HATCHULAT: They are not being withdrawn.

MR. LIPSITZ: That's frankly the basis for my objection.

JUDGE GADSDEN: Objection overruled with the understanding that the document is not being offered for the truth under the column, "Nature of Grievance."

MR. LIPSITZ: But it is being accepted for the truth of the information.

JUDGE GADSDEN: That person acting as supervisor accepted grievances, et cetera.

MR. LIPSITZ: Or participated in grievances.

JUDGE GADSDEN: And grievances.

MR. LIPSITZ: Yes, sir. That's part of the information.

JUDGE GADSDEN: What about "and grievances"?

MR. YAKER: Yes, sir. That's part of the total participation.

MR. LIPSITZ: I would like to ask, your Honor, for not an adjournment today at this point but an adjournment at the close of General Counsel's case, for an opportunity to inquire into and verify the accuracy of this information. Without this, we are stuck with what you accept as the truth and a piece of paper, not documents. It is an abstracted information from documents.

JUDGE GADSDEN: You made your argument before and it's

the same argument; is it not?

MR. LIPSITZ: But I'm asking for an adjournment, your honor.

JUDGE CADSDEN: And I'm denying it.

MR. LIPSITZ: Then respectfully I request, your Honor, then that I'm going to seek a method of ruling at this time.

JUDGE CADSDEN: That's your prerogative.

MR. LIPSITZ: I'm not entertaining anything further. I'm not here to argue the rules, if the rules are wrong or correct in your judgment. That's the way the procedure is played as you well know.

JUDGE CADSDEN: You may continue, sir.

MR. MATCHULAT: One last question, your Honor.

Q. (By Mr. Matchulat) To your knowledge, Mr. Hennessy, since 1974 has New York Telephone Company received a notice from the International Union of Communications Workers of America that it desired to ~~nominate~~ negotiate, with respect to utilization of ~~union~~ unit employees as acting first line supervisors?

A. Not to my knowledge.

MR. MATCHULAT: Thank you, that's all your Honor.

MR. YAFFE: Your Honor, may I just ask one question as a part of the direct case?

JUDGE CADSDEN: Yes.

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DIRECT EXAMINATION

Q. (By Mr. Yeker) The witness, Mr. Hennessy, you had stated before that one of the purposes for the appointing of an acting supervisor, was to observe people in the management role, would you explain that further as to what purpose is involved in that?

A. Not everyone enjoyed or is suited for the rule of supervisor, and during the period of acting supervisor; when a person has to exercise these functions, it gives the management an opportunity to see how well that job is done.

Q. One other question. Are you familiar with the way the company gathers up and posts information on the equalization of overtime?

A. I am generally familiar with it but not as to the specifics as to how it is done right at this time.

Q. Do you know whether or not the company posts information as to how much overtime each individual employee has?

A. Yes, I am familiar with that.

Q. Is that posting on the bulletin boards easily accessible to employees and union representatives?

A. Yes, that information is always available.

Q. And acting supervisors overtime...when is an acting supervisor's overtime based on the average; in accordance with the grievance, is that posted also?

A. When the employee returns to his normal craft job then his overtime is assigned to him, and is the average of the group.

Q. And the information...that information is also posted?

A. Yes.

Q. Is it readily available to the union?

A. Yes.

MR. YAGER: Thank you.

MR. LIPSITZ: Your Honor, unless you go to 6:00 as you suggested earlier, I would like to adjourn now and start my cross-examination tomorrow.

JUDGE GADSDEN: All right, off the record a minute.

(Discussion off the record)

JUDGE GADSDEN: This proceeding will be resumed tomorrow at 8:40.

(Whereupon, the hearing in the above-entitled matter recessed at 4:55 o'clock, P.M., and scheduled to reconvene on Tuesday, January 20th, 1976 at the same place at 8:40 o'clock, A.M.)

* * * * * *

Technical Services and Queens?

A. Yes, in that particular period.

Q. And also Technical?

A. From the Center Office in East, and Installation in East. It looks like East in general goes back to 1968 only.

Q. And the other areas go back to the early '60's?

A. One goes back to '67 but generally the mid to late '60's.

MR. MATCHULAT: Thank you, Mr. Hennessy.

CROSS-EXAMINATION

Q. (By Mr. Lipsitz) Did you sign a statement under oath for the NLRB in connection with this investigation?

A. Sign a statement under oath?

Q. Yes.

A. No, I did not.

Q. Did you sign any statement which was presented to the NLRB in connection with the investigation of this case?

A. No.

Q. Mr. Hennessy in your duties between October 1st, 1968 and November 1st, 1971, did you participate in collective bargaining negotiations during the expiration period of the state-wide collective bargaining agreement?

A. No, I did not.

Q. Did you meet with union representatives, McGavis, Youngberg and several others during the month of April, 1969,

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at which time there was a discussion about the Acting Foreman question?

A. Yes, I did.

Q. Was that meeting at Buffalo, New York?

A. Yes, it was.

Q. Who called that meeting?

A. I called the meeting.

Q. Do you recall the date of that meeting?

A. I think it was April 17th.

Q. Were there any International Representatives present?

A. I don't recall.

Q. Mr. McCavis was, was he not?

A. Yes, he was.

Q. What was his position at the time?

A. President of Local 1122.

Q. Was Mr. Youngberg present?

A. I believe he was.

Q. If your belief is correct; what was his position at the time?

A. President of Local 1115.

Q. How many employees could you estimate at least, bargaining unit-wise, were in the area represented by Local 1122, that is to say the area assigned to Local 1122, to administer the contract during the period October, 1968 to November 1971; recognizing it may have fluctuated, just

the bounds of it?

A. I would guess about 1,000.

Q. All right. And how about 1115?

A. I would estimate perhaps 400.

Q. And 1117?

A. 600.

Q. So it was that group of bargaining unit employees over which you had direct...excuse me, not direct, indirect, but overall responsibility during the period October 1st, 1968 to November 1st, 1971; is that correct?

A. Not exactly. There were some of those people who reported to their other division men.

Q. Pardon me? Because they worked construction?

A. Yes.

Q. What percentage of that number reported to you?

A. 1300 of the 2000.

Q. Does the Telephone Company have and did it have at that period of October 1968 through November 1st, 1971, written operating procedures called by whether you want to describe them as, I believe, "Bell Telephone Company Specifications" or something like that?

A. There are many documents like that.

Q. What is the correct name?

A. I think you're referring to the Bell System practice, BSP.

Q. And amongst those ESP's, are there any describing the duties of First Line Supervision?

A. I don't recall a specific ESP in that regard.

Q. Do any of the written documents describe the duties of the First Line Supervision?

A. There may be descriptions in training courses that we offer that would generally describe what First Line Supervisors do.

Q. You say there may be. Does that mean you have a belief that they are, but you are not certain?

A. I believe that they are.

MR. YAGER: Excuse me. May I have the answer read?

(The pending answer was read back by the Reporter)

Q. (By Mr. Lipsitz) Are there job descriptions for First Line Supervision?

A. Yes, position descriptions.

Q. Do you have any with you?

A. No, I do not.

MR. LIPSITZ: Your Honor may I ask at this time that they produce the same, and in the absence of one, I'd like a recess so that I may ask for a subpoena to be issued for its production.

JUDGE GADSDEN: Production of BPS...ESP Code?

MR. LIPSITZ: What he just described.

THE WITNESS: Position description.

MR. LIPSITZ: Position description?

JUDGE GADSDEN: Position description.

MR. LIPSITZ: I have it Supervisor in the First Line. Whatever they tell me.

JUDGE GADSDEN: Is such document available?

THE WITNESS: Yes, they are, your Honor.

JUDGE GADSDEN: Can you have them produced today?

THE WITNESS: Yes, they are available locally.

MR. YAKER: I'm going to object to that. Again, I think this is a frivolous kind of, with all due respect to Mr. Lipsitz; a frivolous kind of request. Mr. Lipsitz has represented the CWA for many, many years and we have had him in many conferences between the Company and the Union during the bargaining and arbitration and Board proceedings. Mr. Lipsitz and this Union knows the duties of First Line Foremen, as testified to by Mr. Hennessy; there's no dispute as to that. Mr. Lipsitz and the CWA cannot dispute that and to ask for documents which may or may not describe in writing what Mr. Hennessy testified to, is only a waste of time of this Court. But I think it is a frivolous request. There's no dispute on that.

JUDGE GADSDEN: Without taking issue with your statement, you may be correct and you may not; since the document can be produced, is there any problem?

MR.YAKER: I think it may be a waste of time of the Court.

JUDGE GADSDEN: I appreciate what you're expressing about it and I may agree with you or I may not. I'm asking, since it is not putting the Employer to too much trouble to produce the documents, can't you produce?

MR. YAGER: I'll see if we can, your Honor. We'll make an attempt to do so.

JUDGE GADSDEN: Thank you kindly. All right.

MR. LIPSITZ: Your Honor, if that is where you're going to leave it, then I'd like to have the opportunity to request a subpoena to be issued.

JUDGE GADSDEN: That is what I was hoping that we'd have the cooperation of the Employer to produce it voluntarily. If they do, of course, they'll not be a need for a subpoena. If not voluntarily, then I'll certainly do that.

MR. YAGER: Can we be more specific as to exactly what Mr. Lipsitz wants?

MR. LIPSITZ: What Mr. Hennessy described as job description of supervisor, and I'm talking about the First Line Supervisor, or whatever you call that person.

MR. YAGER: The witness had referred to a training manual.

MR. LIPSITZ: Look, Counselor, I told you in response to your question what I asked for. If you don't want to accept that, don't accept it.

MR. YAGER: I think Mr. Lipsitz could calm his voice

down. I don't think there's any reason for this kind of animosity presented by Counsel. I'm just trying to get a clarification of what was requested. If Counsel doesn't know what he wants, that is not my problem.

JUDGE CADSDEN: Perhaps we can have your cooperation. The witness has already answered. The document you requested is available and can be produced. At least the witness does not appear to be confused at all. He has already answered.

MR. YAKER: The witness did speak of training documents, and then a job description. I'm just trying to get a clarification.

JUDGE CADSDEN: I didn't hear a request for training manual. I heard his request, that he asked for a job description. That is all I heard. Am I correct, sir?

MR. LIPSITZ: Yes, sir. That's what I explained.

JUDGE CADSDEN: The witness indicated such a description.

THE WITNESS: Your Honor, there are several different ones. We should be specific.

MR. LIPSITZ: I would request them for all of the foremen positions that are listed in your Exhibit 16, 17 and 18, which to be more specific, are the ones that are set forth under the caption, "Acting Title" on the first page of the summary sheet of Exhibit 16, which starts off with "Service Foremen, Staff Assistants, Service Bureau Foremen and Line Foremen"and so on on down the line.

JUDGE GADSDEN: The descriptions are already in writing. It is just a matter of copying them and getting them here?

THE WITNESS: Yes.

JUDGE GADSDEN: All right. I appreciate your cooperation in this. All right. Do we have an answer?

MR. YAIER: May I have a short recess, your Honor? I'm making inquiries?

JUDGE GADSDEN: That's all right, sure.

MR.YAIER: Excuse me, your Honor. We have just made a request to have the documents produced and they will be here as soon as we can have them.

JUDGE GADSDEN: Thank you, sir.

MR. LIPSITZ: Thank you.

Q. (By Mr. Lipsitz) Now, Mr. Hennessy, and again confining my questions to the period October 1st, 1968 to November 1st, 1971, so I don't have to repeat it each time; the procedure for selecting an Acting Supervisor in one of the capacities listed on the summary sheet of Exhibit 16, the one starting with Service Foreman, Service Bureau Foreman and so on; as I understand it from your testimony, it's for the person occupying the permanent position of Foreman in one of those titles to recommend somebody from the bargaining person, a person who would be selected and reviewed as to qualifications for the position of Acting Foreman, is the first step; is that correct?

A. Yes, recommend to his boss.

Q. Yes, up the line; right?

A. Right.

Q. When that is done for the first time in respect to Employee Smith, for example, what...and he is selected, what orientation and/or indoctrination is he given in respect to the duties that he is going to perform, for example, as Acting Service Foreman?

A. Usually the day or two before the assignment would start, he would spend time with the supervisor of the group, the permanent supervisor who would explain the duties and responsibilities and the active jobs and so forth, and he may spend time with the second line supervisor as well.

Q. And during that period of time what training or orientation, call it whatever you want; is he, this person who has been selected from the bargaining unit to be the acting foreman, exposed to in respect to the administration of the collective bargaining agreement?

A. There would be a brief review of that by the Foreman or the Second Line Supervisor in some of the cases.

Q. And in some cases there wouldn't be?

A. I assume that that is right.

Q. And if you can tell us, you know, what would be the brief review which in some cases would take place over the subject of the collective bargaining agreement?

A. The subjects most likely to come up, like overtime, called out procedures, equalization of overtime. If a grievance was presented, how to get the number for it and so forth.

Q. Were you present during any of these periods in which, briefly, the problems arising under the collective bargaining agreement had been explained to the Acting Foreman?

A. In jobs prior to the '68 period I was involved directly when I was at those levels.

Q. Doing it yourself, in other words?

A. Yes.

Q. Giving the explanation?

A. At first and second level.

Q. Well now, when a person is selected to be the permanent foreman...

A. Yes.

Q. ...in one of these capacities that is listed on the summary sheet of General Counsel's Exhibit 16; does there come a time when he is given a formal training program in respect to the duties and responsibilities of a foreman?

A. Yes.

Q. How long a period does that take?

A. The initial training is two weeks.

Q. Is that two weeks of solid training?

A. Yes.

Q. Or is it two weeks on the job with somebody else or is it a combination?

A. It is two weeks of formal training and it may occur sometime in the first year on the job.

Q. If it is formal training, it is classroom setting?

A. Yes, it is.

Q. And is the subject that is taught during that two-week classroom training period, the handling of grievances and their disposition at the first step?

A. That is one of the subjects.

Q. How long a training period of course work that is covered in that area for the permanent foreman?

A. I believe it is one day out of two weeks.

Q. That is considered, is it not, a responsible duty of a First Line Foreman, receiving the First Line, the Grievances at the first step and disposing of them?

A. It is one of the duties, yes.

Q. You hesitate to characterize it as a responsible duty?

A. I was trying to determine what word you used. It is a responsible duty.

Q. What authority does the foreman at first step have to adjust grievances and where is that described, the authority?

A. They would have the responsibility to adjust grievances themselves on more routine cases.

Q. Who describes what is more routine?

A. Who describes what is more routine? Well...

MR. YAIER: Excuse me, your Honor, the question was extensive and the answer was cut off in the middle. The witness, I believe,has not had an opportunity to finish the first question.

MR. LIPSITZ: There is an objection. Would you make a ruling?

JUDGE GADSDEN: What was the first question?

MR. YAIER: The witness was in the middle of responding to one question, and he was cut off by Counsel.

JUDGE GADSDEN: Please allow the witness to answer.

MR. LIPSITZ: I guess I'm withdrawing the question. You're supposed to continue your answer.

MR. YAIER: May we have the prior question and answer read back?

(The pending question and answer read back by the Reporter)

THE WITNESS: They do have the responsibility to adjust the more routine cases, and the more complex cases they would discuss with their supervisor or the Labor Relations people. Their authority is not spelled out any place to my knowledge, describing which ones are referred and which ones they handled themselves.

Q. (By Mr. Lipsitz) Would that be something that is taught to the foreman during his training program?

A. I don't believe that is included in the training period. It is more an experience factor.

Q. How much experience in adjusting more routine grievances does an acting foreman have when he's first appointed as acting foreman?

A. How much experience does he have?

Q. Yes.

A. If it is the very first time; it would be limited.

Q. It would be zero, wouldn't it?

A. It would be zero on Day 1.

Q. Where is the acting foreman informed as to the difference between routine and more complex grievances?

A. Only by his supervisor.

Q. He tells him that during the session the day or two before he is put on as acting supervisor; is that correct?

A. Or if a grievance is presented, he would discuss it with the supervision.

Q. That is what his instructions were?

A. With a brand new acting supervisor I'd say yes.

Q. As a matter of fact, not only with a brand new acting supervisor but if the same person acts again in six months or a year later, having only acted for a week the first time, he is still going to be relatively inexperienced in such matters; is that not a fact?

A. In that particular case, yes.

Q. Mr. Hennessy, according to you first line supervision, permanent ones, have authority to adjust "more routine grievances"; is that correct?

A. Yes.

Q. Well they learn what is in "more routine grievances" by virtue of experience; is that not correct?

A. Yes.

Q. In the absence of experience, can you tell me how an acting foreman knows whether he has authority to and if so, in respect to what grievances he may make adjustments?

A. By discussing it with his boss.

Q. So actually he lacks authority to adjust grievances...

MR. YAKER: Mr. Lipsitz...ah...

MR. LIPSITZ: Would you mind if I finished? You're so anxious.

MR. YAKER: I didn't say anything, Mr. Lipsitz. I withdrew my "ah".

MR. LIPSITZ: As soon as I finish, you may object at that point. Would you read back the question?

(The pending question read back by the Reporter)

Q. (By Mr. Lipsitz) ...when he is appointed as acting foreman; is that correct?

A. That's not correct.

MR. YAKER: Objection, your Honor.

JUDGE GADSDEN: I'm going to permit you to interrupt.

What is the basis of your objection?

MR. YAMK: The objection is that a conclusion is contained in the question; it is not based on the testimony of this witness.

JUDGE GADSDEN: What conclusion?

MR. YAMK: The conclusion that he lacks authority to adjust grievances. That statement is in Mr. Lipsitz' question. The witness did not testify to that fact.

JUDGE GADSDEN: I agree. I'll allow the witness to answer.

MR. LIPSITZ: You sustain the objection?

JUDGE GADSDEN: I overrule the objection, and I'm permitting the witness to answer.

MR. LIPSITZ: Oh, you're permitting him?

JUDGE GADSDEN: Yes.

MR. LIPSITZ: I didn't understand.

Q. (By Mr. Lipsitz) You may answer.

A. I believe that the foreman does have the authority to settle more routine grievances.

Q. Routine, being something that he doesn't know about except after experience; is that correct?

A. Or in discussion with his boss.

Q. If it is discussed with him; is that not correct?

A. Yes.

Q. You don't know then, do you, in respect to the jobs listed on...withdraw the word "jobs"...the persons listed

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on General Counsel's Exhibit 16, on the occasions that they were temporarily appointed as supervision, what discussion was had with anyone of them regarding the authority that he had or did not have to adjust grievances at the first step?

A. No, not directly.

Q. You only know because somebody else told you about it; isn't that right?

A. Yes.

MR. LIPSITZ: Excuse me, while I look at the grievance procedure, your Honor.

JUDGE CADSDEN: Yes.

Q. (By Mr. Lipsitz) All right, Mr. Hennessy, is it or is it not a fact that the employment relations or labor relations level of the Telephone Company issues instructions regarding the administration of the contract, interpretation of provisions of the contract and the like, to supervision?

A. Yes, they do.

Q. That is part of the function of labor relations?

A. Yes.

Q. In the company is it not?

A. Yes.

Q. Are those instructions collected and put together in a book form or loose leaf form in any fashion, for the use of foremen?

A. I'm not aware of any such document as that.

Q. If a foreman receives a grievance at the first step, what are his instructions as to, and I'm talking about a permanent foreman;as to his authority to make an adjustment of the grievance?

A. What are his instructions?

Q. Yes.

A. His instructions are to investigate the case and to establish the meeting date and get the grievance number and discuss the grievance.

Q. Any further instructions?

A. well, it would depend on the nature of the grievance as to whether it would be referred to higher authority or not.

Q. Does that go back to your other answer; if it was a routine one, he'd have the authority to settle it?

A. Yes.

Q. And if it wasn't routine, he'd have to refer it?

A. Yes.

Q. And there's no definition of what is routine and what is not routine; is that correct?

A. Correct.

Q. Would you take a copy of General Counsel's 19, please, Mr. Hennessy, it should be over there unless the Court Reporter has removed the exhibit?

A. Yes.

Q. I think we had already established by my examination before the acceptance of this exhibit, that you don't have any personal knowledge of any of the information on this document; is that not correct?

A. Correct.

Q. So it wouldn't do me any good to ask you if you knew the details of the first one listed, that is to say, what happened, who the employee was that was involved, what was discussed at the meeting and what was the determination at the meeting, other than the information that is contained on here; is that not correct?

MR. YAKER: Your Honor, in accepting the document there was established an exclusion of the substance of each grievance from the document, so that Mr. Lipsitz even mentioning the substance of what took place at the grievance is objectionable.

JUDGE CADSDEN: Sustained.

MR. LIPSITZ: Well, your Honor, if I may, I intend to ask this witness whether or not the items under "Nature of Grievance" are routine or not routine. Otherwise I don't know. There's no way I'm going to be able to establish whether the people whose names are on here and concerning whom you accepted this for its truth; in fact, attended or in part disposed of the grievance, were exercising supervisory authority to adjust grievances or merely sitting around doing

something, because the witness doesn't know directly and you have accepted this as proof of the fact and I have no way of cross-examining these three pages.

JUDGE GADSDEN: The nature of the grievance was excluded. That portion of the document was not admitted for its truth and therefore it is the same as if it were not on that page, Counselor, and I think you understand that. Now, I think you may continue your interrogation through other means.

Q. (By Mr. Lipsitz) Do you know whether this is M.F. Christensen who gave any answer or just adjusted the grievance listed on the first item?

MR. YAKER: Your Honor, questions have been asked and answered several times, and asked on voir dire, when the document was introduced and asked previously and acknowledged by Mr. Hennessy and there's no point in asking just personal knowledge and the witness has testified several times he has no personal knowledge.

JUDGE GADSDEN: This is cross-examination. I'll allow him more latitude for testing veracity. I will allow Counsel to ask the question again and the witness to answer.

MR. LIPSITZ: The question may be answered. Would you repeat it, please?

(The pending question was read back by the Reporter)

JUDGE GADSDEN: Do you want the witness to answer?

THE WITNESS: I don't know.

Q. (By Mr. Lipsitz) Same question regarding the second item?

A. I don't know.

Q. The same question regarding the third one?

A. I don't know.

Q. In the fourth one, with Mr. Currier, there's an X under the "Cave Ans.", which I assume means he gave an answer.

A. Correct.

Q. Do you know what the answer was?

A. No, I do not.

Q. Under the next one, with Mr. Irish, there is an X under the column "Cave Ans."; do you know what the answer was?

A. No, I do not.

Q. If I asked you regarding each one of the columns in which there was an X under the item "Cave Ans."; your answer would be you don't know what the answer was; is that correct?

A. Correct.

Q. Therefore you do not know whether...withdraw that. Therefore, you do not, do you, in respect to any of the alleged instances in this General Counsel's Exhibit 19,if the supervisor adjusted or refused to adjust the grievance?

A. I believe the document is accurate.

Q. I'm not quarreling with you on the accuracy of it. You didn't personally supervise what's going into the record?

JUDGE GADSDEN: Now just a moment, Counselor. I don't believe the witness testified that he went to the document personally in the first place.

MR. LIPSITZ: I didn't ask him if he believed that it was accurate. That was not my question. He volunteered that he believed it was accurate.

JUDGE GADSDEN: You asked him, did he know, and that is a responsive answer, that he believed it. That is responsive to that question.

MR. LIPSITZ: I always thought there was a difference, your Honor, between knowing and believing, but perhaps I'm wrong.

JUDGE GADSDEN: There's a difference between knowing and believing, but his answer is responsive and we don't know actually what his next best answer is that is with respect to belief. That is what we don't know. Therefore, it is responsive to the question.

MR. LIPSITZ: Thank you, your Honor.

Q (By Mr. Lipsitz) Mr. Hennessy, in respect to any of the columns in which the X under "Gave Ans."; any of the names with respect to which the X is under the column "Gave Ans."; sitting here now, if you do not personally know, do you whether the answer was a denial, an acceptance or a statement that there as a lack of authority to adjust it; you do not know which of those variations was contained in the answer?

JUDGE GALLEN: Mr. Lipsitz, actually I certainly want to give you every opportunity to represent your client and to examine this witness. That is always my policy. But, at the same time, I certainly can't permit you to actually go into a line of inquiry which is really not productive. It is wasting our time. If the witness had said in the beginning he knew these things personally, it would be a different situation. He testified that the information on the document was extracted at his request and it came from official company records. Now, you have taken the last ten minutes to propound questions with respect to his personal knowledge which he didn't testify to in the first place. That is not very helpful to the Court. I have permitted you to ask some questions. I didn't know you were going to make it as extensive as you have, and it is not productive to the record at all. There is no way the Court can construe the answers to the questions that are propounded to the witness at this time and draw some conclusion, when the witness said in the first instance that it was not coming from his personal knowledge. How is that helpful to the Court? I'd appreciate it if you'd go on with your examination to whatever else you have in mind, but certainly this line of inquiry is not helpful.

Q. (By Mr. Lipsitz) Mr. Hennessy where an X appears under a column "Gave Ans.", does that indicate that the answer was affirmative, negative or a denial of the authority

to give an answer?

A. It indicates that the acting foreman gave the answer, whatever the answer was.

Q. The question is does it indicate whether the answer was affirmative, negative or that he lacked authority to give an answer?

MR. YAKER: Mr. Arbitrator...your Honor, the document speaks for itself. It is in evidence.

JUDGE CADSDEN: The document speaks for itself. Counsel for the Respondent raised the very question, and he said, it doesn't give the answer. He said the answer was given and that's all. That is another question that really is not directed to what the document was admitted and have purported to have represented.

MR. LIPSITZ: Your Honor, you're saying to me that in a critical area of General Counsel's case, where as of now, the only proof of supervisory authority that I see on the part of an acting foreman is what is contained in these three pieces of paper, which you have accepted as a "business document" over my objections, for which you said there's not going to be anymore argument; that I'm not therefore, going to inquire into what the authority of the foreman was?

JUDGE CADSDEN: In the first place you are putting an interpretation of this document as proof, not this court; that

is your statement. The document was admitted. No one said it was proof of anything. I'm not going to permit you to waste the Court's time, Mr. Lipsitz, by asking questions that are totally unrelated to the document itself. It was not admitted for that purpose. I'm affording you every opportunity to represent your client. That is exactly why I permitted you to continue to interrogate to this extent. There must be an end to that, when it is unproductive. Do you have any other questions of the witness?

MR. LIPSITZ: I'm not going to know until you write your decision, what you have accepted, and the only opportunity I'm going to have is during this hearing; that is why I'd like to know what is meant by the column "Gave Ans.".

JUDGE CARSKEN: The witness has said that the foreman or acting foreman answered; that's all. Am I interpreting correctly?

THE WITNESS: Right.

JUDGE CARSKEN: That is all the witness said. He doesn't know what the answer was.

MR. LIPSITZ: That is what I'm asking. I'm asking whether the answer is a denial of the grievance, acceptance of the grievance or statement of non-authority. I don't want the answer as to the grievance.

JUDGE CARSKEN: His explanation is on record. Would you

continue with your examination, sir.

Q. (By Mr. Lipsitz) Mr. Hennessy, would you please look at General Counsel's No. 16 and particularly the summary sheet, turning to...

A. Is 16 the Upstate?

Q. Yes. Turning to the portion of the summary sheet which consists of information about Local 1122.

A. Yes.

Q. If I read this correctly in 1972 there was on one occasion, one temporary supervisor appointed in the engineering area of the geographic location in which Local 1122 performed functions for CNA; is that correct?

A. Correct.

Q. That was after you were here?

A. Correct.

Q. Was the engineering work covered by the collective bargaining unit?

A. The outside plant engineer function, design the facilities that go from the main frames of our buildings out to all customers premises; poles, cable, conduit and so forth, the design of that is the engineering.

Q. In Buffalo, New York area where do those people work?

A. I believe at that time they were in Main Place, across from the H & T.

Q. Is that where the company's offices were?

A. At the H & T.

Q. No, Main Place.

A. There were offices at both H & T and the Main Place and numerous others.

Q. What bargaining unit employees, other than people in the Engineering function, worked at Main Place?

A. I believe there were some Order Completion Clerks that would have been under Installation Repair, in a centralized unit. That was that building.

Q. Of course your not being there in 1972, you don't know, do you, whether there was any union representative, a steward assignment or a steward located at those premises?

A. I don't know that.

Q. There is nothing for the year 1971; thereby suggesting, if I read this correctly that there were no acting foremen appointed during this year in the geographic area in which Local 1122 represented the interest of the CWA; is that correct?

A. Correct.

Q. Does that mean therefore, that no permanent supervision took vacations during that period of time?

A. It does not mean that.

Q. Does that mean that none were ill during that period of time?

A. It does not mean that.

Q. What is the other reason...strike that. Does that mean the company was not interested in learning something more about the potential of bargaining unit persons to become foremen during the period of time?

A. It does not mean that.

Q. What other reasons are there that the Telephone Company appoints acting foremen?

A. For cut-offs of major equipment.

Q. Does that mean during the period of time we're discussing there were no cut-offs of major equipment?

A. It does not mean that.

Q. For other reasons do you appoint temporary foremen?

A. Temporary expansion of the work force.

Q. You may answer it a little differently; was there a temporary expansion of the work force during this period of time?

A. During '72?

Q. '72...'71.

A. I don't believe that there was an expansion of the work force in 1971.

Q. That wouldn't be a reason in 1971, to appoint the acting foremen; is that correct?

A. I really don't recall that there was a temporary expansion of the work force at that time.

Q. What other reasons are there other than the ones we have

enumerated, for appointment of acting foreman?

A. If a permanent foreman was put on a special assignment and thereby creating a temporary opening.

Q. Does that mean no temporary opening in 1971 in the geographic area of Local 1122?

A. No, it does not mean that.

Q. Any other reasons...

MR. YAKER: Excuse me. The question is vague.

MR. LIPSITZ: Do you understand what I mean; for the appointment of temporary foremen? That is what he has been responding to and I assumed that is what he understood.

THE WITNESS: I think those are the principal reasons.

Q. (By Mr. Lipsitz) Can you explain then why no temporary foremen, in 1971 in the geographic area?

A. Half of '71, the bargaining unit was on strike.

Q. What about the other half?

A. I believe the ban was effective.

Q. What ban?

A. The ban on acting foremen.

Q. Effective in what respect; that the company did not appoint anybody?

A. And the fact that nobody accepted acting appointments.

Q. Do you know whether those jobs were offered and declined during 1971, during the time when the workers were not on strike, in Local 1122?

A. I believe we continued always, to look for acting foremen.

Q. Do you know in fact whether you did offer the position of acting foremen during 1971 during the period there was not a strike, throughout that area of Local 1122?

A. No specific individuals, no I don't know of my own knowledge.

Q. In 1970, if I read it correct, there were no appointments to acting foreman, in the geographic area covered by Local 1122; is that correct?

A. Correct.

Q. If I ask you the same series of questions about '70, other than the fact there was no strike during '70; would your answers be the same?

A. Yes, they would.

Q. So the absence of the appointment of temporary foreman in the area covered by Local 1122 during 1970 did not mean that the five or six reasons for appointing the foremen were not present during that period of time?

A. No, they were present. This need was there.

Q. In 1969, I think you'll agree with me, there is what appears to be a rather significant reduction from the preceding three years from the figures of the number of persons and numbers of times that people were appointed to acting foremen in the area represented by Local 1122.

MR. YAKER: I object to the question. The document speaks for itself. And whether it is a significant reduction or not is something for your Honor to decide and not for the witness.

JUDGE GADSDEN: Overruled.

Q. (By Mr. Lipsitz) You may answer it.

A. Many of the titles there was a significant reduction. Not in all.

Q. Now...

MR. YAKER: Sorry, I didn't hear the last answer.

THE WITNESS: Not in all. Not all titles.

Q. (By Mr. Lipsitz) Were any of these in 1969, appointments that took place after June 1st, 1970...correct...1969?

A. May I check the other section?

Q. Of course you may go to the supporting information.

A. There were none after that date.

Q. Now, Mr. Hennessy, you testified...you may, unless you feel like holding it, you may put it down.

A. Thank you.

Q. Excuse me. Sorry. One more set of questions from there. Look at 1115 and 1117 summary sheet, will you please?

A. 1115 first?

Q. Yes. We can do this rather rapidly. If I read this correctly, following 1969 there were none until 1973; is that correct?

A. Correct.

Q. And in regard to 1117 following 1969 there were none, until 1973; is that correct?

A. Correct.

Q. Could you rapidly just tell us whether in 1969, whether any were appointed after June 1st, 1969?

A. I'd have to go through the list again.

Q. Again with regard...

MR. YAKER: Your Honor, the document is in evidence. The summary indicates that none had been appointed after September, 1973.

JUDGE GADSDEN: Would you stipulate?

MR. YAKER: No need to stipulate, the document is in evidence, and Mr. Lipsitz stipulated to it as...

MR. LIPSITZ: I'm not challenging...

JUDGE GADSDEN: The point is well taken. It would be helpful to the Court if he would make the statement on the record. I would be spared the time of having to check the record. What is the date in '69?

MR. YAKER: Whatever the summary indicates, we would stipulate that that is accurate.

JUDGE GADSDEN: I don't know if that is responsive to the question.

MR. YAKER: Mr. Lipsitz is asking whether or not any have been appointed between that date in 1969 on the summary and the subsequent date.

JUDGE GADSDEN: What is the record or the document say?

MR. YAKER: The summary says that in 1969 there were five individuals who had been appointed acting foreman on six different occasions in '69 and installation repair.

JUDGE GADSDEN: Does that answer your question?

MR. LIPSITZ: Oh, no. The question is whether they were appointed after June 1st, 1969. That is what I asked him to check for. May I continue to do it.

JUDGE GADSDEN: I think he is trying...

MR. LIPSITZ: I know he is. I don't know if you are ruling on his objection or something.

JUDGE GADSDEN: No, continue.

THE WITNESS: There are no cases.

Q. (By Mr. Lipsitz) In both...in respect to the area represented by both locals, the appointments were before June 1st, 1969, in that year?

A. Yes.

Q. Mr. Hennessy, you testified that among the duties of permanent first line supervision were "settling informal problems as they arise". Would you tell us what an informal problem is as distinguished from a grievance, or is it the same?

A. It is not the same. It is an item brought to the attention of the foreman by an individual craftsman and/or a steward, not in the form of a grievance; a problem that has

not yet reached the grievance stage.

Q. Can you be specific by telling us some that you recall, one at least that you can recall?

A. I can offer you examples of them.

Q. Yes.

A. Of the way that motor vehicles were assigned to a particular individual; the particular overtime assignment that an individual didn't get and thought that perhaps he should have been working that Saturday or something like that; and an end day shown on the schedule.

Q. What did...an end day?

A. An end day of work not scheduled and it might have been shown on Tuesday and couldn't it be a Wednesday, because of my particular personal needs; those could also be grievances, but often they are brought as informal problems.

Q. Now then, do you know of any specific instance of an acting foreman who settled an informal problem and if so, can you tell us who it is and when?

A. Specific case, no.

Q. Other than what is on GC Exhibit 19, can you tell us about any case of an acting foreman settling any grievance, that is to say, adjusting it?

A. 19 is the list of grievances?

Q. Other than what is there?

A. Other than that, no.

Q. Other than what is on Exhibit 19, do you know of any acting foreman who has accepted a grievance and given relief?

A. Other than on Exhibit 19?

Q. Other than what is on 19.

A. No.

Q. You testified that the company had been appointing acting supervisors since 1958. Just for the record, when was the first collective bargaining relationship with the CWA if you recall?

A. 1961.

MR. YAKER: Your Honor, if I may just interject at this point and prior to 1961 however...

JUDGE GADSDEN: Your comments are not appropriate at this time.

MR. YAKER: May I request a stipulation from Mr. Lipsitz that prior to 1961 there was another union involved other than the CWA?

JUDGE GADSDEN: If Mr. Lipsitz is willing to stipulate.

MR. LIPSITZ: At this time I'm not willing to stipulate. I'd like to continue with my cross-examination.

JUDGE GADSDEN: You may continue.

MR. LIPSITZ: No further questions.

JUDGE GADSDEN: Yes, sir.

MR. YAKER: I have just one or two, if I may.

MR. MATCHULAT: I have no questions, your Honor.

REDIRECT EXAMINATION

Q. (By Mr. Yaker) Mr. Hennessy, foremen, permanent foremen, if he is experienced; let's say he's only been on the job for three weeks or four weeks. How does he generally exercise his duties, disciplines and responsibilities of disciplining employees; does he seek advice from higher levels of management, in your experience?

A. Yes.

Q. Is this true in regards to most of his duties as foreman, when he is inexperienced?

A. In that very early period?

Q. Yes.

A. Yes.

Q. Now, as far as you know are there acting foremen who have been appointed acting foremen more than two or three times?

A. Oh, yes.

Q. And as far as you know, have acting foremen been appointed for durations of longer than three or four weeks on particular occasions?

A. Yes.

Q. Are you familiar with the grievance procedure as outlined in the collective bargaining agreement between CWA and the company?

A. Yes.

Q. I refer you to Article 1102. Here, I'll just give you a copy.

A. Yes.

Q. Article 1102 has the phrase "presented at immediate supervisory level or the alternate"; do you see that phrase?

A. Yes.

Q. What does "alternate" mean?

A. Means someone else...well, to me it means someone else in management that would sit in.

Q. Would an acting foreman be an alternate for a permanent supervisory?

A. It would be possible, yes.

MR. YAGER: That's all I have, your Honor.

JUDGE GADSDEN: Thank you. Mr. Lipsitz?

MR. LIPSITZ: Yes.

RECROSS-EXAMINATION

Q. (By Mr. Lipsitz) Do you know of any instances when the acting foreman was alternate to supervision?

A. Not to my knowledge.

MR. LIPSITZ: No further questions.

JUDGE GADSDEN: You may step down.

MR. MATCHULAT: At this time, your Honor, Counsel for the General Counsel would call Mr. Roy A. Jordan to the stand, please.

JUDGE GADSDEN: Mr. Jordan.

Whereupon,

ROY A JORDAN

was called as a witness by and on behalf of the Counsel for the General Counsel and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Matchulat) Would you give your name and address to the Reporter, please?

A. Roy A. Jordan, 85 Chesire Lane, East Amherst, New York.

Q. Mr. Jordan, are you currently employed by the New York Telephone Company?

A. Yes, I am.

Q. Your current position?

A. Division Construction Superintendent, Outside Plant Maintenance.

Q. In the Western area?

A. Western area of the NewYork Telephone Company.

Q. How long have you been in this position?

A. Approximately two and a half years.

Q. Would you please describe your duties and responsibilities as Division Construction Superintendent, Outside Plant Maintenance in the Western area?

A. I'm responsible for the maintenance and repair in the outside plants in the Western Part of the State of New York in the territory, New York Telephone Company, and that

encompasses all the poles, the anchors, the cable, underground conduit; anything associated with the outside plant.

Q. With respect to your duties and responsibilities in this position; do you have any labor relations responsibilities?

A. I respond to all the second step grievances initiated by the three locals in the western area, Local 1122, 1115 and 1117.

Q. Mr. Jordan, I'm speaking of outside plants in the western area, what departments are encompassed in outside plant?

A. The outside plant organization, we have a Divisions Operations Manager, outside plant. That is my boss. He is responsible for construction, the engineering and the maintenance of all the outside plant facilities in the western area.

Q. And in your labor relation responsibilities, do you deal with any local or locals of Communications Workers of America?

A. Because of my area responsibilities I deal with all three locals. Local 1122 is generall in the City of Buffalo. Local 1117 is Niagara Falls, Lockport and Batavia, Local 1117 in Niagara Falls and Local 1115 is the Olean complex.

Q. Now, within the City of Buffalo, how many outside plants does the New York Telephone Company maintain?

A. You mean garage locations?

Q. Yes.

A. Work locations?

Q. Work locations.

A. We have many. I can start with the one at 4555 Bailey, one in Tonawanda, one on Hertel Avenue, one at 64 Bailey, one on Scajaquada. There are many more. And all the central office buildings.

Q. Do you know an employee by the name of Richard MacVie?

A. Richard MacVie at the Tonawanda Garage.

Q. How long have you been employed by the New York Telephone Company?

A. Approximately 23 years.

Q. Would you please relate what positions you have held, the dates held and the locations held since you have been employed with the New York Telephone Company?

A. I started in 1952 here in Buffalo in the Building Department, Building Service Man and for the first 10, 11 years until 1963, I held jobs in the Construction Department as a Cable Splicer Helper, as a Line man, as a Splicer, as an Outside Maintenance Splicer. In 1963 I was given acting assignments of long duration, lasting about 9 months until October '64 at which time I was appointed Cable Splicing Foreman in the Eggert Garage. In 1964 to 1966 approximately May, I was a Cable Splicing Foreman. I was appointed Supervising Construction Foreman and that job lasted about

four months until September 1966, when I was appointed an Acting Plant Manager in Hamburg and in April of 1967 I was Permanent Plant Manager. I left Hamburg in 1969 to return to Buffalo as Construction Supervisor for the Northeast. I was in that assignment until 1972, at which time I was appointed District Superintendent in Albany, relocated my family to Albany. I returned in April 1973 to Buffalo. My present title is Division Construction Superintendent, Outside Plant Maintenance.

Q. Mr. Jordan, at anytime during your employment with the New York Telephone Company, had you been a member of the Communications Workers of America?

A. Yes.

Q. When was that?

A. In 1963.

Q. Which local were you a member of?

A. 1122.

Q. During the period of your employment between 1952 and 1963, at anytime, did you accept an acting supervisory position?

A. Yes.

Q. Do you know what position you assumed during that period of time, 1952 to 1963?

A. Line Foreman and Cable Splicing Foreman.

Q. And what duration, during that period of 1952 to 1963,

what was the duration of your acting assignments?

A. There were various lengths, two weeks, three weeks, nine months.

Q. And under what circumstances did you, in the years between 1952 and 1963, under what circumstances did you accept an acting supervisory assignment?

A. Generally I was back-filling for the first line supervisor that I reported to. However, I would, on occasion, was asked to take a special assignment and went on special assignment.

Q. When you say "back-full", what did you mean by that?

A. Well I filled his job in the vacancy when he went on vacation or when he was off sick.

Q. During that period of 1952 to 1963, when you acted in these positions as acting foreman or supervisory; what were you told about your job if anything, and by whom?

A. Generally I rode with the foreman whose place I was taking, for a day or two and he would convey to me the effort he was trying to accomplish and moreor less tell you, "Why, you are the guy in charge. You run it."

Q. Now, Mr. Jordan, you said that in 1963 through December '64 you were Acting Supervisor. Approximately when in 1963 did you accept the long-term assignment?

A. In the fall of 1963 the methods people came up with some new technology with regard to cable splicing and there

was a fairly large estimate from Main Street to Franklin, a cable job. The supervisor came out and asked me if I would be willing to accept a long-term acting assignment to do the special function.

Q. And that lasted until when?

A. It lasted until about early summer, June 1963. At that time I terminated that assignment. The job was completed and I was about ready to fold it all in when a permanent foreman had a heart attack and they asked me would I be willing to back-fill for the permanent foreman, and I accepted.

Q. On the special assignment job from late '63 through the summer of '64, what was told to you about your job and by whom?

A. I recall sitting down with two construction supervisors who asked me various questions on the technology, about the methods, about the kind of people that I thought I would need to get the job done, about the problems I would encounter with the new technology, our force levels, what they expected of me, what I expected of them; that type of information.

Q. What if anything were you told about your responsibilities with respect to your people?

A. Well, I was told that I would be responsible for their daily efforts; that if overtime were required I could approve it on the spot, because the techology was such, see,

we weren't sure that we could finish it in a work day, and there were nights when overtime was required on a last minute basis.

Q. And during the period from October '63 to the summer of '64, when you were an acting cable splicer foreman, how many people were working, let's say, with you, or under you?

A. Approximately eight.

Q. What were their positions?

A. They were all cable splicers.

Q. Now, in the period from 1952 to 1963 when you had the acting supervisory assignment and also from late 1963 through the summer of 1964, during those periods when you acted; how were you compensated in comparison to the period of time when you were not an acting supervisor, but you were in the crafts?

A. The compensation at that time, 1963 was 10% of my current salary as a craftsman.

Q. Was that 10% added on to the base?

A. 10% added on to my normal wages as a craftsman.

Q. Okay. And you said that you became a permanent cable splicing foreman in October of 1964?

A. In October of 1964, yes.

Q. That was until when; until what time?

A. I was in that position until the spring of 1966.

Q. Were you in the Buffalo area?

A. Yes, Eggert Garage, 4555 Bailey.

Q. You were a cable splicing foreman?

A. Yes.

Q. What were your duties in that position?

A. I had about eight cable splicers working for me. I was responsible for the workload. I was responsible for the quality that went with it, the safety assurance plan, the attendance program, the tardiness program; any problems that my force had scheduling overtime. The obvious labor relation problems that may occur.

Q. Now, as a cable splicing foreman, during that period of time from October of '64 to the mid 1966 period, did you possess authority to discipline cable splicers?

A. Yes.

Q. Under what circumstances?

A. Well, I can recommend disciplining people for failure to have comparable work area protection, for failure to wear hard hats and the glasses, for attendance problems, tardiness problems. Actually there is no discipline per se. It is a case of beginning to keep a record.

Q. Did you assign work in that position as cable splicing foreman?

A. Yes.

Q. Do you ever encounter complaints of cable splicers with respect to their working conditions?

A. Yes. I can remember some complaints about the condition of manholes, generally the housekeeping of them and the complaints that the people were not really too happy working in the manholes, that they were dirty and we had to have them cleaned up.

Q. There was a period of time when you were a permanent cable splicing foreman, between 1964 and 1966?

A. Yes.

Q. Now, prior to the time that you became a permanent cable splicing foreman and in referring to the time prior to your becoming a permanent cable splicing foreman; in other words during the period of time you were acting as cable splicing foreman and before 1964, what were your duties during those periods before 1964 as compated to your duties after 1964 when you became a permanent cable splicing foreman?

A. I think the duties were generally the same. There may have been some minor differences, but they were generally the same.

Q. With respect to your authority that you wielded both as acting supervisor before 1964 and how did that compare to the authority you wielded as permanent cable splicing foreman after 1964?

A. I don't think the authority really changed.

Q. In other words similar authority?

A. Yes.

Q. During the period that you were permanent cable splicing foreman, between October 1970...excuse me October 1964 and June 1966; do you know of situations in which other cable splicers acted as foreman?

A. Yes,people acted in my absence. I did some training back in those days and some of my own people acted in my place.

Q. Did you have any role in the selection of who would be considered for acting supervisory positions while you were permanent cable splicing foreman?

A. Yes, I recommended my second line supervisor, the name of the individual who I thought could fill my place, and he agreed and we put him in.

Q. And there was an agreement on who would be selected. What was the next step,as far as having the person accepted as acting supervisor?

A. I'd go out and ask him if he'd like to back-fill for me while I was at school or vacation and he accepted. Then we spent a day or two together, at which time I'd update him on the work that had to be done. Obviously I had to show him many things in pre-survey and post-survey and estimates that we were working on, the status of estimates, paperwork that had to get out of the office, et cetera.

Q. And was this a voluntary...was there anything compulsory upon the employee to accept the position as acting

supervisor?

A. No, no. He could have said no to me, if that is what you mean. He could have said "no, I refuse."

Q. Was it voluntary?

A. Yes.

Q. Since you have been in your current position as division construction superintendent of the outside plant maintenance in the western area, do you know if employees represented by CWA, have been approached to accept acting supervisory positions?

A. Yes.

Q. And during this period since you have been in your current position, have employees, unit employees, accepted acting supervisory positions?

A. Yes.

Q. And referring to the period since you have been in your present position, Mr. Jordan, what positions are subject to being filled by unit employees on an acting basis, what positions are we talking about?

A. In the entire plant...outside plant organization, it would be line foreman, cable splicing foreman, construction clerk supervisors,engineering records supervisors.

Q. Generally first line supervision?

A. Generally first line supervisors.

Q. Now the positions that you have mentioned, you just

mentioned; what departments of outside plant do they fall in?

A. Actually they fall in all three departments; the engineering, construction and maintenance.

Q. Referring to a period since you have been in your current position, what responsibilities have permanent supervision, first line supervisors had since you have been in your position; what has been the responsibility?

A. Well, you mean his present position?

Q. Now, I'm talking about first line supervisors, permanent first line supervisor.

MR. LIPSITZ: Over what period of time?

MR. MATCHULAT: Since he has been in his position.

MR. LIPSITZ: Since ~~1963.~~

Q. (By Mr. Matchulat) That's correct.

A. The foreman is responsible for organizing the work. He is responsible for responding to trouble that is dispatched out of our dispatch center. He is responsible for all the reports that go with generally first line supervision; the safety assurance plan, the quality control plan, the attendance program, the tardiness program, any labor relations program and problems that are brought to him. The approving of the work, the approving of overtime, the handling of the time sheets, appraisals; many, many areas of responsibility.

Q. How would you compare the responsibility of the first line supervisors today as to what your responsibilities were

as a first line, as a cable splicing foreman from 1964 to 1966?

A. They are the same.

Q. What authority does the first line supervisor possess, speaking of the periods since you have been in your current position, with respect to grievances?

A. Well, the first line supervisor has the authority to resolve a grievance if it falls within his area of responsibility.

Q. With respect to complaints other than grievances, formal, written grievances; what authority does the first line supervisor possess?

A. He has authority to resolve complaints on a daily basis.

Q. What are the reasons for utilizing unit employees on an acting basis?

A. Well probably the primary reason for using employees on an acting basis is twofold. We as management people, can observe the individual in actual management assignment. We can see how well he performs. The individual himself can see does he have a real feel for a management job, does he really think he would like it, and also in our business I think it is imparative that we maintain a cadre of qualified crafts people who can fill the various management jobs in the Telephone Company, as we have done historically.

* * * * * *

Q. Who is F. J. Kroboth.

A. Frank Kroboth, Cable Splicing Foreman, permanent.

Q. Each of these documents, 20 and 21, if accurately kept, lists everybody who is in attendance at the first step meeting; is that correct?

A. Yes.

MR. LIPSITZ: No objection.

JUDGE GADSDEN: Okay, General Counsel's Exhibits 20 and 21 are received into evidence.

(The documents above-referred to, heretofore marked General Counsel's Exhibits 20 and 21 were received into evidence)

MR. MATCHULAT: Your Honor, may we go off the record?

JUDGE GADSDEN: Off the record.

(Discussion off the record)

JUDGE GADSDEN: Back on the record.

Q. (By Mr. Matchulat) With respect to employee complaints other than written grievances, does the Acting Supervisor possess authority?

A. Yes.

Q. What authority does he possess?

A. Well, he possesses the authority to rectify minor complaints.

Q. Are you aware of instances since you have been in your present position, where an acting supervisor has resolved complaints other than grievances?

A. Yes.

Q. And do you know...can you give us any examples of these types of complaints and the acting supervisor involved?

A. Well, recently we had a complaint about the supplying of an ice machine, per se, at 4555 Bailey Garage and the first line supervisor was able to resolve it by making arrangements to purchase ice locally and have it delivered.

Q. And who was the acting supervisor?

MR. LIPSITZ: He didn't say he was acting.

THE WITNESS: Yes, he was acting supervisor.

Q. (By Mr. Matchulat) What was his full name?

A. Sherwood Sponholtz.

Q. When did the incident arise from the ice machine?

A. Within the last six months.

Q. During the period of time you have been in your present position and acting supervisors have beenutilized, have the acting supervisors received any pay differentiation during the period of time they were acting?

A. Yes, currently they receive 6% of the rate of pay, of the yearly rate of pay for the supervisor whose responsibilities they are assuming. For example a simple deduction would be $1200 a year divided by the 52 weeks is the salary he'd get per week over and above his normal salary.

Q. Now, does an acting supervisor fill out time sheets?

A. No, he would fill out a time sheet under one circumstance,

where acting for two days or less. Where he was acting three days or more or a full week; an acting supervisor does not prepare a time report. It is prepared in the same manner that the full-time foreman's sheet is prepared.

Q. Does a craftsman prepare a daily time report?

A. Yes, a craftsman prepares a daily time report and there are some locations who prepare a daily time report. I'm sure the Central Office prepares a weekly report.

Q. Does the acting supervisor have any authority with respect to approval of time sheets of the craftsmen?

A. Yes, the acting supervisor must sign the time sheet at the work location and he also would have to assign a supplemental that goes to the MWR Center in the morning from overtime the night before.

Q. Does the New York Telephone Company retain any records as would indicate employees, the employees in the outside plant department in the western area who have served as acting supervisors?

A. No, we do not keep any reports, per se, on who was acting for what period of time. There's no report kept like that.

Q. But are there records that would indicate the employees who have acted as supervisors?

A. In order to gather that information, you would have to look at each individual payroll card in the District Office.

MR. MATCHULAT: Your Honor, if I may at this time, Mr. Jordan...there's a compilation with respect to the western area outside plant that has been prepared under Mr. Jordan's direction and he would so testify and itiisolates the information as to individuals who have acted as acting supervisors in the period of 1970 to 1975, based again on payroll records. Mr. Lipsitz has been given a copy of it prior to the hearing and I would...with the one exception... there was one inadvertent error, leaving off names of four people that should be on the exhibit. That is why I wanted to get it Xeroxed. I would propose to stipulate the document's introduction. I believe the first step would be to have them marked.

(The document above-referred to, was marked General Counsel's Exhibit 22 for identification)

MR. MATCHULAT: Your Honor, I would offer into evidence General Counsel's Exhibit 22 at this time.

MR. LIPSITZ: No objection.

JUDGE GADSDEN: General Counsel's Exhibit 22 is received into evidence.

(The document above-referred to, heretofore marked General Counsel's Exhibit 22, was received into evidence)

MR. LIPSITZ: Specifically I have no objection to this one, and so I make the record; because I have had an opportunity to verify the information, unlike Nos. 17 and 18.

JUDGE GADSDEN: Thank you, sir.

MR. MATCHULAT: With respect to General Counsel's 22, I believe there is one error on the exhibit. I believe that is on Page 6, one error. On Page 6 at the bottom, with respect to an individual by the name of John Theal.

Q (By Mr. Matchulat) Now, I'll believe I'll just ask Mr. Jordan. Do you know what the circumstances are with Mr. John R. Theal?

A. Well, Theal was promoted in 1963. That is why his name and title as acting management, and as I understand it, this is acting management assignments held by present craft employees through 1975. John Theal is not a craftsman anymore. That is why that is an error.

MR. MATCHULAT: I just wanted the record to indicate that one discrepancy.

MR. YAKER: Well, your Honor, may I just supplement that. The information on it with regard to the period he was acting supervisor, is correct.

THE WITNESS: He just became a permanent supervisor.

JUDGE GADSDEN: I can't have your explanation on the record.

MR. YAKER: Well, General Counsel can make that explanation.

JUDGE GADSDEN: Through the witness. The witnessknows that. We don't clarify a document in that manner.

MR. MATCHULAT: I'd like to make one statement. The

document states it is for "Acting Management Assignments held by present craft employees". I just want the record to be clear that Mr. Theal is no longer a craft employee.

JUDGE GADSDEN: Is this witness knowledgeable of what you're trying to explain?

MR. MATCHULAT: Yes.

JUDGE GADSDEN: Well, have the witness doit. You're not under oath.

MR. MATCHULAT: All right. I believe he did testify.

JUDGE GADSDEN: Interrogate the witness. I can't accept your statement.

MR. MATCHULAT: Okay.

Q. (By Mr. Matchulat) What is the present circumstances with Mr. John R. Theal?

A. John R. Theal today is a permanent cable splicing foreman in the northeast, Millersport Highway Garage.

Q. When did that come about?

A. 1973. I think the summer of 1973.

Q. Well take a look at the exhibit.

A. Excuse me. I'd have to look at the payroll records to see exactly when he was promoted, but John Theal today is permanent cable splicing foreman.

Q. Promoted to permanent cable splicing foreman?

A. Yes.

Q. Thank you.

A. And John Theal was also an acting cable splicing foreman.

MR. MATCHULAT: That is all I have on direct, your Honor.

JUDGE GADSDEN: Before we go to cross-examination, I think it is appropriate for a recess at this time.

MR. LIPSITZ: May we find out if he signed a statement first, your Honor, so I could look at it during the recess?

JUDGE GADSDEN: Yes, you're certainly entitled to that.

MR. LIPSITZ: Did you sign any statement under oath for the NLRB in connection with the investigation of this case?

THE WITNESS: I signed a statement.

MR. LIPSITZ: For whom?

THE WITNESS: For the New York Telephone Company.

MR. LIPSITZ: To be given to the NLRB?

THE WITNESS: Yes.

MR. LIPSITZ: Was it sworn to?

THE WITNESS: Yes.

MR. LIPSITZ: Do you have a copy, Mr. Matchulat?

MR. MATCHULAT: I have a copy, Mr. Lipsitz.

MR. LIPSITZ: May I take a look at it?

MR. MATCHULAT: Let the record show that Counsel for General Counsel is giving Mr. Lipsitz a copy of Mr. Jordan's statement.

MR. LIPSITZ: Thank you.

* * * * * *

Q. Who was the person before whom it was taken; just identify him.

A. You mean who? John R. Barrett.

Q. I happen to know who he is, but that doesn't mean anybody else in the room does. Who is he?

A. Right Of Way Claims Supervisor for the New York Telephone.

Q. Somebody working for New York Telephone?

A. Yes.

Q. This is your statement as to what happened?

A. Yes.

Q. You didn't sit there and he asked you questions to which you responded?

A. No, I did not.

Q. And whose instance did you prepare this?

A. The Company Attorney.

Q. Mr. Yaker?

A. Yes.

Q. He went over and told you what you wanted to cover in here?

A. No, he and I went over everything.

Q. Before or after?

A. When I signed it, yes.

Q. Was he present whenthis was prepared?

A. Was he present when that was prepared?

A. He and I communicated on the telephone.

Q. He wasn't physically present? You and he discussed what should go into the affidavit; he didn't tell you to tell the truth, but discussed the subject matter that is going to go in the affidavit?

A. He and I discussed the subject matter.

Q. Among the subject matters you discussed, was the authority of an acting supervisor regarding grievances; is that not correct?

A. Yes.

Q. In your words when you wrote this, you stated and you want to look at it with me in respect to that?

A. Yes.

Q. I'm referring to the last paragraph, Page 1, "When I was an acting supervisor, I had the full responsibility, duties and authority of a regular foreman, including the authority to receive grievances and to be present at grievance hearings as a company representative." And that is a description by you at that time, of the authority of an acting supervisor in respect to grievances; is that not correct?

A. Yes.

Q. Is that an accurate description?

A. Yes.

MR. LIPSITZ: I have no further questions.

MR. YAKER: I have one question.

JUDGE GADSDEN: Yes.

REDIRECT EXAMINATION

Q. (By Mr. Yaker) In connection with General Counsel's Exhibits 20 and 21, I note that on the top left-hand corner where it says "Presented" there is a date on General Counsel's Exhibit 20, July 10th, and on the bottom lower left-hand corner it says "Grievance Meeting held July 13th." Can you explain the difference in the two dates. Same thing with General Counsel's Exhibit 21. It says "Presented July 9th." "Grievance Meeting held July 13th".

A. By contractual agreement we have seven days to respond to the grievance.

Q. Does this mean that the grievance meeting at which the permanent foreman was present was that a different time than when the grievance was actually presented?

A. Yes.

Q. Do you know whether or not acting supervisors, whether Mr. Maloney was acting supervisor on July 13th?

A. No, I'd have to look in the records.

Q. But clearly he was and from the document he was an acting supervisor on July 10th?

A. Yes.

MR. YAKER: That's all.

MR. LITTZ: After General Counsel, I do have another

question.

MR. PATCHULAT: I have no questions, your Honor.

JUDGE CARDEN: Any further questions?

MR. YAGER: Nothing further.

MR. LIPSITZ: I do have some.

JUDGE CARDEN: Mr. Lipsitz.

RECROSS-EXAMINATION

Q. (By Mr. Lipsitz) Mr. Jordan, without regard to the particular events reflected in CC 20 and 21; in a general way, who selects the employer representative to be present at the first step grievance hearing?

A. It usually happens that the permanent foreman or whoever is filling the vacancy at the time, could be a different foreman than who received the grievance, and would say, "Okay, I'll hear it on Tuesday." Then he will either just ask somebody else in the garage, another management person, "Would you like to sit in with me" or he might call other foremen from another location that had a similar problem. That is generally the way the first step is handled.

Q. I may have asked you this. It may be objected to. Objected to as repetitious although I should not be the only one held to that task. Do you know of any instance of a temporary foreman actually convening and sat in at the grievance at the first step?

A. Not to my knowledge.

MR. LIPSITZ: Your Honor, I would like to point out to

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you as General Counsel's Exhibit 22, for your illumination, it shows that Mr. Maloney was an acting foreman for the period 6-24-73 through 7-15-73, a period which begins before and goes after the two dates on 20 and 21.

JUDGE GADSDEN: Thank you, sir.

MR. LIPSITZ: Nothing further.

MR. YATES: Your Honor, it also indicates that that was the first time Mr. Maloney was an acting supervisor in that period of time.

MR. LIPSITZ: No further questions.

MR. MATCHULAT: No further questions, your Honor.

JUDGE GADSDEN: You may step down, sir.

MR. MATCHULAT: At this time, your Honor, General Counsel will call Edward L. Babington to the stand.

Whereupon,

EDWARD L. BABINGTON

was called as a witness by and on behalf of the Counsel for the General Counsel and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Matchulat) Would you give your name and address to the Court Reporter?

A. My name is Edward L. Babington. B-a-b-i-n-g-t-o-n. My home address is 163 South Ketchem Avenue, Amityville, Long Island, New York. Area Code...I mean Zip Code 11701.

Q. Mr. Babington, are you currently employed with the New York Telephone Company?

A. I am.

Q. How long have you been so employed?

A. Next month it will be 30 years.

Q. What is your current position?

A. My current position is General Labor Relations Supervisor for the New York City Region.

Q. How long have you occupied that position?

A. Since 12-15-67.

Q. Would you please relate your duties and responsibilities as General Labor Relations Supervisor for the New York City Region?

A. My responsibility first of all, I'm a member of the Company Bargaining Team for the Plant Department. Secondly, I administer the Plant Contract and several others as well. I give advice to the field on the proper interpretation of the contract. I hear third step grievances, which is the last step before arbitration.

Q. Mr. Babington, you mentioned that you are a member of the bargaining team for the company. For which collective bargaining agreements have you been a participant in negotiations?

A. For CWA in 1968, 1971 and 1974.

Q. And you did participate in negotiations in the year 1968?

A. Yes, I did.

Q. Mr. Babington, what prompted the negotiations in 1968?

A. 1968 negotiations were actually the result of a wage reopener clause which was in a contract negotiated in 1967.

Q. And when did the negotiations on the 1968 agreement commence?

A. The negotiations in 1968 ran from July 1st, 1968 through July 29th, 1968.

Q. Who represented the company at those negotiations?

A. Mr. W. R. Littell was the Chairman of the Team. Myself; Mr. D.F. Roche, who represented upstate New York and Mr. D.M. Gillespie, who represented New York City at that time.

Q. Who represented the union?

A. The union side, Mr. M. Don Sanchez was the Chairman of the Bargaining Team for the Union. We have Mr. King, Mr. Keenan, who was President of 1103, Mr. Herb Smith, Mr. Bob Smith, Mr. Jim McCabe who was President of Local 1101.

Q. Mr. Babington, I show you what has been received in evidence as General Counsel's Exhibit No. 14, which is stipulated to be a union proposal or group of proposals.

A. Yes.

Q. At the 1968 negotiations.

A. Yes.

Q. I refer you to, on that document, Article 9.09.

A. Yes.

Q. Do you recall discussion on that particular proposal?

A. I do.

Q. And do you recall what the discussions were on that proposal?

A. This proposal, as I recall, was union proposal No. 3. It was presented by Mr. Dan Keenan, who was President of Local 1103. But a member of the bargaining team and Mr. Danny Keenan presented it, and in the discussion period which followed there were questions by Mr. Littell and Mr. Littell said to "clarify this so I have an understanding of what you are looking for." Are you intending to restrict our right to promote people to acting management?" The response from the union was affirmative. "Yes." He also said, in other words, for further clarification; are you trying to put some sort of pressure on people to refuse to accept these acting management jobs? And the response once again was affirmative. This is on the 1st. The particular proposal was discussed twice; once on the 1st of July, the second time was on the 29th of July in 1968. The first intercourse which I just mentioned to you with the questions and the interchange, and again later when we discussed it further, Mr. Littell, in refusing or denying this particular demand on the part of the Local or on the part of the Union, rather, said that, "We don't intend to give up our right to appoint people to acting management positions."

Q. And what was the final disposition of that proposal?

A. Well that was denied and for all intents and purposes that was the end of it. We have never again had this, at least I know there was never represented again, in 1971 or 1974.

Q. Was any other proposal presented in either 1971 or 1974 which would restrict the use of acting supervisor, individuals in acting supervisory positions?

A. In my review of the bargaining minutes for 1967 I found that there was a proposal made in 1967 as well which was similarly rejected. That was...

MR. LIPSITZ: Excuse me.

THE WITNESS: That was by Mr. Cushing, who was then a Vice-President.

Q. (By Mr. Matchulat) After 1968, was there any other proposal presented?

A. None that I'm aware of whatsoever.

MR.MATCHULAT: That's all the questions of the witness I have, your Honor.

JUDGE GAISMEN: Cross-examination?

CROSS-EXAMINATION

Q. (By Mr. Lipsitz) Mr. Babington, did you make a statement for the Board?

A. I did not.

Q. Did you make one with the Company Counsel, to be used

by the Board?

A. No, I did not.

Q. Do you have minutes of the negotiation session for 1968?

A. No. Do we have? Yes.

Q. Do you have them in your possession?

A. I have a copy in my bag.

Q. Did you use those at anytime to refresh your recollection as to the events of 1968?

A. Yes, I did.

Q. Would you look at those, please. I'm only referring to portions which relate to your testimony.

A. Yes.

MR. YAKER: We have, your Honor, the July 1st extract and July 28th extract.

JUDGE GADSDEN: Extract from what?

MR. YAKER: From the minutes Mr. Lipsitz is asking for and just indicated that he just wants that portion involved in the testimony.

JUDGE GADSDEN: Thank you, sir.

MR. LIPSITZ: May I have a short recess to look at this, please?

JUDGE GADSDEN: Certainly. Off the record.

(Discussion off the record)

JUDGE GADSDEN: On the record.

Q. (By Mr. Lipsitz) Mr. Babington, prior to going into

the 1968 negotiations, did the company receive proposals from the union?

A. You're saying, prior to going into the 1968 negotiations?

Q. Yes, sitting down and starting; did they receive any proposals?

A. Not that I know of. When you are speaking of that, I'm not sure that I understand your question.

Q. Then I'll restate the question.

A. Yes.

Q. In 1968, when did the company get the union proposals which is General Counsel's 14 and shows union proposal number three?

A. In 1968 bargaining, which was a wage reopener company proposals which are made by the union are made to us.

Q. At the bargaining table when you first met in other words?

A. Yes.

Q. At the beginning of negotiations?

A. Yes.

Q. Did you become aware then that before the discussion was had about CC 14, and Union Proposal 3, even that it was presented?

A. We know that it was presented across the table, yes.

Q. Did you look into the history or background to determine what had been going on around the State and

the New York Region?

A. Well, I can't tell you at that point in time whether or not Mr. Littell did any examination of that. I did not. I looked in my particular area, because at that particular time I was in Long Island and I had the Brooklyn, Queens and Nassau and Suffolk Counties and Staten Island.

Q. You didn't have the areas which Local 1103 operated?

A. No, I did not.

Q. Were you aware sometime during the negotiations, that 1103 had instituted a ban in 1967?

A. Yes, I became aware of that.

Q. How did you learn of that?

A. I'm not sure. I can't tell you. There was much discussion. It was a declaration by Danny Keenan, as I recall, but I can't recall exactly when or how I learned of it at that time.

Q. Do you know whether the minutes of which I have portions, will reflect any discussion in which he mentioned the ban that his local had, that is 1103 had as early as 1967?

A. I can't state positively that they are there, without actually going back and looking at the minutes.

Q. You do have some recollection though of Mr. Keenan who is President of Local 1103 saying there was among other things, there was a ban that his local had, as long as 1967?

A. Yes, Ido recall Mr. Keenan talking a great deal about this type of thing.

Q. Was there talk from the company's side at the time, knowledge that the company representatives had and in fact the ban had been instituted at that time?

A. I can recall that they said that there was. I don't know who said it or anything else of that sort. I can't state it positively. I do know that there was actual discussion about a ban, but that the fact was that we still continued to appoint people to assignments, those assignments.

Q. That was all discussed in other words?

A. Yes.

Q. So there was discussion about the fact of a ban and in spite of it there were people being appointed to assignments?

A. Yes. I don't recall that there was a great discussion across the table, or just something I heard in our meeting; got together with Mr. Littell, you know, preparing for bargaining.

Q. Mr. Babington, do you know whether or not during the period that Local 1103 had the ban, that you say was discussed either in preparation for bargaining or at some time during the sessions in 1968, that as a consequence the company began to promote increasing numbers of persons permanently to foremen? Was there such discussion?

A. I cannot say that at all.

MR. LIPSITZ: I have no further questions. Excuse me... withdraw that.

Q. (By Mr. Lipsitz) Does the company have what is referred to as a Appraisal Center?

MR. MATCHULAT: Objection, your Honor. This is outside the scope of direct examination. We're talking about the negotiations. We're not talking about appraisal centers here, in Mr.Babington's testimony.

JUDGE GADSDEN: What is the connection, Mr. Lipsitz?

MR. LIPSITZ: I withdraw the question. I have no more.

MR. YAGER: Your Honor, I propose a stipulation with Counsel for the Respondent that the strike in the CWA represented bargaining unit occurred July 14th, 1971 and ended February 18th, 1972, and that Local 1103's jurisdiction is Westchester County area.

JUDGE GADSDEN: Do you agree to that proposal?

MR. LIPSITZ: I hadn't agreed to it but it seems to be perfectly correct, isn't it?

JUDGE GADSDEN: So you do agree? All right. The stipulation is received as stated and agreed to.

MR. YAGER: Thank you, your Honor. That's all I have.

MR. MATCHULAT: No further witnesses.

JUDGE GADSDEN: It might be an appropriate time to break for lunch, gentlemen. We will resume at 12:45.

(Whereupon, the hearing in the above-entitled matter recessed at 11:30 o'clock A.M., and was scheduled to resume at 12:45 o'clock, P.M., the same day)

AFTERNOON SESSION

12:45 P.M.

JUDGE CARSON: Back on the record.

MR. MATCHULAT: Would you mark these, please for identification.

(The documents above-referred to, were marked General Counsel's Exhibits 23 through 28, for identification)

MR. MATCHULAT: Your Honor, I ask to recall Mr. James Hennessy to supply some further application and clarification with respect to General Counsel's Exhibit 19, which was the list of ~~active~~ supervisors involved in the grievances in 1962 to 1975 and some back-up documents for that particular exhibit.

JUDGE CARSON: Mr. Hennessy.

Whereupon,

JAMES HENNESSY

was recalled as a witness by and on behalf of the Counsel forthe General Counsel and, having already been duly sworn, was examined and testified further as follows:

JUDGE CARSON: May I remind you that you're still under oath.

THE WITNESS: Yes, your Honor.

DIRECT EXAMINATION

Q. (By Mr. Matchulat) I show you what has been received into evidence as General Counsel's Exhibit 19, which is

entitled "Acting Supervision involved with Grievances". With respect to the document have you had any occasion recently to make any further inquiry with respect to the information from which this document was prepared?

A. Yes, I asked this morning that the copies of the company documents, the minutes of these meetings were transmitted to us today.

Q. And who did you contact and what was the method of transmission?

A. Working through Mr. Wagner and he arranged for contact. The ones from Utica were telecopied to us today.

Q. Who is Mr. Wagner?

A. The man in the back of the room. He is a Labor Relations Supervisor for the Western Area. He works for me now.

Q. And has Mr. Wagner received or yourself received telecopies of information with respect to the items on General Counsel's 19?

A. Yes, several of the items.

Q. And some of this has been provided from the request made of you to Mr. Wagner?

A. Yes.

Q. And from Mr. Wagner to the other location?

A. Yes.

MR. TATCHULAT: Your Honor, I'll have two additional

copies.

JUDGE GAMSER: That's all right.

Q. (by Mr. Mitchell) Now, Mr. Hennessy, I show you what has been marked for identification as General Counsel's 23 and ask you what that purports to be?

A. Those are the minutes of grievance meeting involving Mr. Currier, that is the fourth item on Exhibit 19, and it describes the meeting that took place and the grievance, the decision and it is signed by Mr. Currier, the Acting Service Foreman.

Q. And I show you what has been marked, Mr. Hennessy, as General Counsel's Exhibit 24, and ask you what that purports to be?

A. That is a summary of the first step grievance meeting. That is the fifth item on the list.

Q. Referring to General Counsel's Exhibit 19.

A. General Counsel's 19, the acting foreman, Mr. Irish, and the grievance that was involved and his name is at the bottom as being signed by Mr. Irish.

Q. Mr. Hennessy, I show you what has been marked as General Counsel's Exhibit 25 and ask you what that is?

A. That is a summary of the first step grievance minutes of the grievance involved...excuse me, that Mr. D.H. Jones, acting service foreman, heard in July of 1963. These are the official minutes.

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Q. Now, at the bottom of General Counsel's Exhibit 25, which is marked for identification, there is a title which is apparently typed in, Acting Line Foreman, and in the signature block it is vacant or there is no entry there. Do you know why the name does not appear in there?

A. Well, some types of ink do not transmit well. It is possible that that is this case wherein that...

Q. But an Acting Line Foreman title does appear on the bottom of that page?

A. Yes, it does, next to Mr. Jones' name is an abbreviation "Acting".

Q. I show you what has been marked as General Counsel's Exhibit 26 for identification and ask you what that is?

A. That is the summary of the grievance 3117...excuse me 347 involving Mr. Hayes, Acting Cable Splicing Foreman, and these are minutes of that grievance meeting.

Q. And at the bottom of that page it is signed, the name is Mr. W.M. Hayes, Acting Cable Splicing Foreman?

A. Yes.

Q. Does that Grievance No. UN 347 appear on General Counsel's 19?

A. Yes, it does, on the first page.

Q. I show you what has been marked for identification as General Counsel's Exhibit 27 and ask you what that is, sir?

A. That is another case involving Mr. Hayes. These are the minutes of the first step grievance reviewed with the union, August 15th, 1963, and Mr. Hayes is the Acting Foreman's name appears on the bottom.

Q. Mr. Hennessy, with respect to General Counsel's Exhibit 23, 24, 25, 26, 27; was this part of the information which you received through your request of Mr. Wagner, this day?

A. Yes, that is the material.

Q. I show you what has been marked for identification as General Counsel's Exhibit 28, and ask you what that is, sir?

A. These are the minutes of the grievance 4509, UW, which is the Western Area grievance, and it is the third case listed with the acting foreman, Mr. Linkowski. These are minutes of that grievance.

Q. Mr. Hennessy, with respect to that document, I direct your attention to where the line near the top of General Counsel's Exhibit 28, where it states there is printed matter where it says "Steward presenting grievance" and typed in it says "Carl Shaffer," and it says the supervisor is R.Leverence. Do you know the circumstance for that entry?

A. I understand that is thepermanent foreman, Mr. Leverence. Mr. Linkowski was acting and received this particular

grievance and discussed it with Mr. Wagner, but because it involved his own role as acting foreman, the grievance was heard by the permanent foreman, Mr. Leverence and Mr. Klees, as part of the management committee.

Q. Were you informed as to who the grievance was presented to?

A. Yes, I was informed it was presented initially to Mr. Linkowski.

Q. How did you receive that information?

A. Mr. Wagner, who discussed it with Mr. Linkowski...

MR. LIPSITZ: I'm going to ask that what he was informed be struck, unless it is just testimony concerning what he was informed, but as to the truth of what he was informed, this witness is not competent and therefore I ask that it be stricken as hearsay.

MR. MATCHULAT: Your Honor, if there's some question as to those assertions, then a witness can be presented to describe the circumstances with respect to General Counsel's Exhibit 28.

JUDGE CARSDEN: Is Mr. Wagner here?

MR. MATCHULAT: Mr. Wagner is here.

JUDGE CARSDEN: Well I sustain the objection. Have that done by that witness, since he is here.

Q. (By Mr. Matchulat) Mr. Hennessy, what date appears as the presentation date on General Counsel's Exhibit 28?

A. August 7th, 1975.

MR. HATCHULAT: Your Honor, I'm sure the record will reveal that the charge in this matter was filed in July of 1975.

JUDGE GADSDEN: I beg your pardon?

MR. HATCHULAT: The charge in this case, I just bring your attention to the matter that the charge was filed in July of 1975. Your Honor, at this time I offer into evidence General Counsel's Exhibit 23 through 28.

MR. LIPSITZ: Onthe exhibits, if I may examine.

JUDGE GADSDEN: Yes, sir. The numbers again are 23, through 28.

MR. HATCHULAT: 23 through 28.

JUDGE GADSDEN: Thank you.

EXAMINATION VOIR DIRE

Q. (By Mr. Lipsitz) Mr. Hennessy, I'm going to ask you the same question regarding each one of these documents. Do you know what is being offered as respectively General Counsel's Exhibit 23, 24, 25, 26, 27, 28 is a true and accurate copy of any company record?

A. Yes, they are the copies of the company records.

Q. Can you tell me why you know that to be a fact?

A. Because I believe that the people that I directed to produce them accurately pulled copies of the right minutes and transmitted them.

* * * * * *

Q. You don't have an independent recollection of when he was acting foreman?

A. No, I'd have to go by the record.

Q. Of course. Based on what you see here, do you want to retract...

A. Yes, I would.

Q. Your statement that at the time of the grievance that Mr. Linkowski wasn't an acting foreman on the basis of GC 22?

A. That I have just learned, yes.

Q. You say you talked to Mr. Linkowski about the grievance. When did you talk to him about it?

A. Other than when I called him about a number, only at that time.

Q. What did you say to him and what did he say to you?

A. He asked me for a grievance number and he told me what the subject of the grievance was and I issued him a grievance number.

Q. Did you give him any advice as to how to handle it?

A. I'm trying to remember some of the events. Excuse me just a minute. Yes, I think I said to him that I would like to think about this one. I was not so sure it was a valid grievance under the contract.

Q. That is part of your function isn't it, Mr. Wagner?

A. Yes, it is.

Q. Is to give advice to people in supervision how to answer grievances?

A. Yes.

Q. Did you get back to him thereafter?

A. I did, that day.

Q. Did you give him advice?

A. I told him to accept the grievance and told him to proceed with the numbered grievance 4509.

Q. Thereafter did you give him any other advice?

A. Hadn't talked to him.

Q. You wouldn't have told him not to accept it if you didn't think it was a valid grievance; is that correct?

A. Yes.

Q. That would be what you would have instructed him?

A. Yes.

Q. You are not aware of the circumstances as a result of which Elges and Leverence were at the first step meeting, rather than Linkowski, are you?

A. I thought I was. Apparently not.

MR. LIPSITZ: Apparently not. That's all.

MR. YAKER: May I ask a few questions on this?

JUDGE GADSDEN: Yes.

REDIRECT EXAMINATION

Q. (By Mr. Yaker) Mr. Wagner, on occasion does it arise that a foreman, permanent or otherwise is the subject matter of a grievance? For example, do situations ever arise where

* * * * * *

a grievance. He has witnesses here who can testify that either Currier, Irish, Jones or Hayes did or did not receive grievances. There's no need for extended adjournment to investigate this type of thing.

JUDGE GADSDEN: Thank you, Counsel. The motion is overruled. I'll say to Mr. Lipsitz that I will take into consideration the mode of preparation of that document and also the fact that you do not have notice before this morning. All right. May we continue.

Whereupon,

NELSON C. BECKER

was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

MR. LIPSITZ: So my silence does not assume consent; although Mr. Yaker was not speaking as a witness, but as an advocate.

JUDGE GADSDEN: The fact that your motion was overruled does not necessarily mean that the court agrees with that argument.

THE WITNESS: My name is Nelson C. Becker. 6 Buell Street, Akron, New York.

DIRECT EXAMINATION

Q. (By Mr. Lipsitz) Mr. Becker, are you an employee of the New York Telephone Company?

A. Yes, I am.

Q. How long have you been employed?

A. 34 years, nine months.

Q. Are you presently an officer of Local 1122?

A. I am.

Q. What office?

A. President.

Q. How long have you been President?

A. I was President for 15 months.

Q. From what time to what time?

A. September of 1974 until December of 1975.

Q. Then you have been reelected?

A. Just been reelected.

Q. In 1973, more specifically during the month of September, did you hold any union office?

A. I didn't hear you.

Q. In 1973, more specifically during the month of September did you hold any union office?

A. Yes.

Q. What office?

A. Vice President, Local 1122.

Q. I show you a copy of General Counsel's Exhibit 8, a communication dated September 10th, 1973 to "All District 1 Staff", from "Morton Bahr, Vice President" and I ask you if you have ever seen that or a copy of that document before?

A. Yes.

Q. When did you first see it?

A. In your office.

Q. When?

A. That was I believe, the end of December.

Q. What year?

A. 1975.

Q. And did you at my request, make an examination of the records of Local 1122 to determine whether that or a copy of that document was present in any of those records?

A. I did.

Q. Did you find anything?

A. I found nothing.

Q. Does Local 1122 keep records and has it prior since 1973 communications received from Mr. Bahr's office?

A. Yes, they do.

Q. Do you get communications from his office?

A. Yes, we do.

Q. This communication, I call your attention, is addressed to "All District 1 Staff". Are Local Officers of 1122 part of District 1's Staff?

A. No, they are not.

Q. Are local officers paid by the CWA for services of Local Union Offices other than going to conventions and things like that?

A. They are not.

Q. Was any report made, to your knowledge to the members at membership meetings, about the contents of this communication, General Counsel's Exhibit 8?

A. Never.

MR. YAKTR: I'm going to object to the entire line of questions and ask that it be stricken on the grounds that Mr. Lipsitz, in the early part of this day, when General Counsel's 8 was introduced, had stipulated to the authenticity, and that was a document issued by Vice-President of District 1 of the CWA, District 1, whose jurisdiction is the entire State of New York, and so I think that the line of questioning is totally improper, attempting to impeach the documents, the accuracy of which he was stipulating to.

MR. LIPSITZ: Not at all. The line of objection was to relevance and materiality. By this witness, it is shown that it was never brought to the attention of this local or officers and membership. That has nothing to do with whether issued or not.

JUDGE GADSDEN: I overrule the objection insofar as precluding Counsel for the Respondent from continuing his examination.

BY MR. LIPSITZ:

Q. Mr. Becker, other than that communication, General Counsel's No. 8, did any staff member of any District Council 1, to your knowledge, in September of 1973 or since that

time, instruct Local 1122 concerning the subject of the temporary ban on foremen?

A. Not to my knowledge.

MR. LIPSITZ: No further questions.

MR. MATCHULAT: General Counsel has no questions.

MR. YAKER: I have a couple. Mr. Becker, would you tell me what the jurisdiction of District 1 is, of CWA?

THE WITNESS: The State of New York.

MR. YAKER: The entire state of New York?

THE WITNESS: Yes.

Q. (By Mr. Yaker) Would you say that Mr. Morton Bahr, Vice-President of the District, Vice-President of CWA, was his jurisdiction all of District 1?

A. Yes.

Q. And is that position, Vice-President of the CWA District 1, a position within the union hierarchy, superior to the position of Vice-President, Local 1122?

A. Yes.

MR. YAKER: No further questions. I'm sorry, one other question.

Q. (By Mr. Yaker) As Vice-President of Local 1122, do you see every document that is sent to the local?

A. Yes.

Q. Every single document that comes in the local?

A. Yes.

Q. Has theoccasion ever arisen that you have missed seeing a document addressed to the President of the Local?

A. If I had missed it it would still be in our file.

Q. But you may have missed seeing it; is that correct?

A. This could be a possibility, but not a probability.

MR. YAKER: Nothing further.

MR. LIPSITZ: Nothing.

JUDGE GADSDEN: You may step down.

(Witness excused)

MR. LIPSITZ: May we go off the record a minute?

JUDGE GADSDEN: Off the record.

(Discussion off the record)

JUDGE GADSDEN: On the record. We'll take a five-minute recess.

(Short recess taken)

JUDGE GADSDEN: Back on the record.

MR. LIPSITZ: Would you mark these for identification, please.

(The documents above-referred to, were marked Respondent's Exhibits 2 through 16 inclusive, for identification)

MR. LIPSITZ: I call Mr. Hennessy.

Whereupon,

JAMES HENNESSY

was recalled as a witness by and on behalf of the Respondent and, having already been duly sworn, was examined and testified

* * * * * *

A. I cannot deny that possibility.

MR. LIPSITZ: That's all.

MR. YAKER: I cannot affirmatively state now that I have any questions, but I don't have any questions.

JUDGE CADSDEN: You may step down.

(Witness excused)

JUDGE CADSDEN: Do you have another witness?

MR. LIPSITZ: Certainly.

MR. YAKER: Your Honor, I'm sorry. Idid have one question to ask Mr. Hennessy, which I neglected to do before he went off that stand. I realize I'm somewhat out of order, but I had it written down.

JUDGE CADSDEN: I will allow you to ask the question. The witness may remain where he is.

Whereupon,

JAMES HENNESSY

was recalled as a witness and, having been already duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION

Q. (By Mr. Yaker) Mr. Hennessy, are these position guides that are introduced in evidence as Respondent's Exhibits 2 through 16, if it does not contain..I'll rephrase. Does that contain every duty that the particular foreman does?

A. There may be some minor functions that are left out.

Q. If the Guide does not contain, for example, a statement

that he adjusts grievances or participates in grievances, is it your position that every foreman still has that authority?

A. Every foreman has that authority.

JUDGE GADSDEN: Mr. Lipsitz?

MR. LIPSITZ: Maybe you'd better go back to the witness stand.

JUDGE GADSDEN: If that is necessary. Would you step down, please.

(Whereupon, Mr. Hennessy returned to the witness stand)

REDIRECT EXAMINATION

Q. (By Mr. Lipsitz) Mr. Hennessy, is the adjustment of grievances a minor function?

A. It's generally not a minor function.

Q. And it is only minor functions, according to you, that may be left off the description; is that correct?

A. Generally, that is correct.

Q. Mr. Hennessy, do you know a single instance of temporary foremen who have ever adjusted grievances, and if so, please give me his name.

MR. YAKER: I object. That was not part of my direct.

JUDGE GADSDEN: And I believe you have asked that question.

MR. LIPSITZ: Of this witness?

JUDGE GADSDEN: And to show you howmuch latitude I can

allow, I will allow you to ask him that.

Q. (By Mr. Lipsitz) Including the name, please, and any description of what occurred?

A. Not other than what has been submitted.

Q. In GC 19?

A. Yes.

Q. What minor functions have been left off GC 2 through 16? Would you mind taking a look at them? I'm sorry, let me get you a copy.

MR. YAKER: Your Honor, there are 16 of these documents. Each one is two pages long and it's going to take some time to read through each one.

JUDGE GAISDEN: I don't know if he wants to do that much. Maybe one area of inquiry.

Q. (By Mr. Lipsitz) I'll repeat the question. With respect to R 2, what minor functions have been left off there?

A. An example in this case might be the purchasing of minor office supplies or supplies and that kind of thing.

Q. All right. That is fair enough. Anything else of a minor character that might have been left off that?

A. There may be other individual reports prepared that were not listed.

Q. Anything else that you can think of that might be left off?

A. That is it.

Q. That about does it?

A. I think so.

Q. Now, I'm going to show you R 7, which is marked "New 1-17-75 Central Office Foreman - Toll." Under Responsibility Paragraph 12, "Administer the Union Contract and participate in grievance discussions and handle first step hearings." Was there a minor function left off of there in connection with that?

A. In connection with Item 12?

Q. Yes.

A. Item 12 alone?

Q. Yes, just Item 12 alone. Was there a minor function left off?

A. Well, administering the union contract covers the waterfront.

Q. I'm asking you if there was anything left off?

A. In connection with Item 12, only?

Q. Yes.

A. Preparation of the minutes.

Q. All right. What else if anything?

A. Well the item of posting overtime records, which would be under the union contract is not listed as a separate item.

Q. It may be listed elsewhere, may it not?

A. Would you like me to find that?

Q. If it is on there. I'm asking you what is left out, not what is listed.

A. The only other item that seems to be left out is the preparation of certain reports that would not be listed.

MR. LIPSITZ: I have no further questions of the witness.

JUDGE GADSDEN: You may step down.

(Witness excused)

JUDGE GADSDEN: Mr. McGavis.

Whereupon,

PAUL E. McGAVIS

was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

MR. LIPSITZ: Shall I proceed?

JUDGE GADSDEN: Yes.

DIRECT EXAMINATION

Q. (By Mr. Lipsitz) Mr. McGavis, are you an employee of the Telephone Company?

A. Yes, I am.

Q. For how long?

A. 18 years.

Q. In 1966 were you elected to any office in the local?

A. Yes, I was.

Q. What local?

A. Local 1122.

Q. What office?

A. Local President.

Q. How long did you remain President?

A. Four years.

Q. During the period that you were President, did you in that capacity, become acquainted with any problems which were brought to your attention, without regard to whether you were right or wrong about them; regarding the position of acting foremen?

A. Yes, I did.

Q. In what fashion were those problems brought to the attention of the officers of the local?

A. The complaint from the steward and/or the membership which I have personal conversation with at various and numerous times while President of the Local and during that period.

Q. Now, as a consequence of those complaints, and again without regard to whether they were good or bad or meritorious or lacked merit; did the membership of Local 1122 take any action?

A. Yes, they did.

Q. When did they take action?

A. They took action on May of 1969.

Q. What action was taken?

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A. The membership voted to invoke a ban on the acceptance of acting foremen by the Members of Local 1122.

Q. Now, before that ban was invoked, were there any meetings with company representatives concerning the subject of acting foremen and the selection of bargaining unit people for those positions?

A. Yes, there was.

Q. Can you recall with any certainty when any meeting took place?

A. Yes, on April 16th, 1969, a meeting took place between members...

Q. Tell us who was at the meeting?

A. Members of the union in the western area, myself representing Local 1122, Robert Youngberg representing Local 1115 and Gail Berthout, representing Local 1115, Niagara and Jan Pearce, ~~CWCA~~ CWA Staff Representative assigned to our area locals, and the New York Telephone Representatives, headed up by Mr. Hennessy, who at that time, as I recall, was Division Superintendent for the western area and Mr. Edward Thomas, who was Division Construction Superintendent for the Western Area. In attendance also was Mr. Tracey from the New York Telephone Company who was a supervisor of some rank in the Personnel Department. I'm not exactly sure but he was possibly Division 11, there was a number, maybe two or three other company representatives of a subordinate

level there, too, as well.

Q. Does Gail Berthout have a position with the company at the present time?

A. She is in management with the company at the present time as I understand.

Q. As far as you know she is not in the bargaining unit?

A. Right.

Q. Who called the meeting and where was it held?

A. The company called a meeting in Buffalo, New York.

Q. That is a large area.

A. I think as I recall, one M & T Plaza, Main Street, downtown, in the company offices, on the 16th.

Q. Are those some corporate offices?

A. Yes, the company maintains corporate offices there.

Q. How did you become informed of the meeting?

A. The company either..I don't recall this specifically, but they notified us that they wished...at least I was notified that they wished to meet with myself and that they were also contacting other local representatives to meet in negotiations sessions in proposed summer hires for the summer of '69.

Q. Now, is that the first time, Mr. McGavis, that you had been called to a meeting with company representatives to discuss an area of the relationship between the company and the union outside of the grievance procedure?

A. No, I wasn't.

Q. Can you recall specifics of prior occasions when the company had asked the union to sit down with it concerning matters not pertaining to the grievance procedure?

A. It was common to meet with the company each year on a local area basis, if you will; in this case the Western Area of the New York Telephone Company, and discuss each year in usually December, the vacations proposed for the next year and to, if you will, negotiate or haggle with the company over the pending vacation schedule, and you know, for the next summer.

Q. Any other subjects?

A. Well, that was on a regular basis. There were some irregular meetings we had from time-to-time on other subjects, including meetings with them to negotiate on; we had a Buffalo Agreement on Switchmens Tours and covering the methods of rotation of these tours between the available employees in these groups, covering how the replacement slots would be filled when and if a vacancy occurred in the normal rotational cycle. Things like that.

Q. Were these taken up as a consequence of grievances or taken up as a consequence of some other matters which came to the company's attention?

A. I would think it was the normal business of implementing, representing the members locally as an extension of the

actions of the bargaining unit...of the bargaining in New York City once every two years.

Q. Were these matters to which you allude, worked out directly between union local representatives of 1122 and management?

A. Yes.

Q. And were they sometimes done in connection with other Upstate Locals, 1115 and 1117?

A. Yes, in those cases, yes.

Q. Was anything ever reduced to written form as a consequence of these meetings, discussions and/or negotiations?

A. The company was somewhat reluctant to reduce our agreement, if you will, to writing for fear they might be precedent setting, possibly, for other parts of the State.

MR. YAMIN: I'm going to object to that answer, your Honor, on the grounds that there's no foundation laid for the basis of his testimony to that regard. That the company was reluctant to reduce to writing, in view of the fact that at least four bargaining agreements are in evidence, which are in writing. There is no foundation for that.

JUDGE GADSDEN: Lay the foundation.

Q. (By Mr. Lipsitz) Were you ever told by any management representatives, their view about whether they would sign and put in written form any locally agreed upon negotiations or agreements?

MR. YAGER: Objection, your Honor, on the grounds that the answer requested in the question is pure hearsay, and may not be introduced for the substance of the answer.

JUDGE GAGLIEN: I didn't get the full import of that question.

(The pending question was read back by the Reporter)

JUDGE GAGLIEN: What was your objection?

MR. YAGER: My objection, your Honor, was that the answer to be elicited by the question would be pure hearsay and may not be introduced for the truth of the substance of the answer.

JUDGE GAGLIEN: I don't see how you could conclude it would be hearsay, if he identifies the person to whom he was speaking, and they did give him such information. I'll overrule the objection.

MR. YAGER: I believe, your Honor, I think that the matter is not material, even assuming, arguendo, only that in other areas a company official may have said to the witness, and this is only assuming arguendo only, that they are reluctant to put in writing a local agreement. The question here is what occurred in facts surrounding this case. What may have occurred elsewhere is not relevant or material to the issues before you.

JUDGE GAGLIEN: The results about which you speak might very well be the case, Counsel, but Counsel for the

Respondent's question is not an improper question. Now, you may attack that on cross-examination, but that is not a basis for objection. The objection is overruled. The witness may answer.

THE WITNESS: Yes.

Q. (By Mr. Lipsitz) Will you tell me the name of any company representatives and about when it was that he said it?

A. Mr. Jack Kelly, a meeting when I was Vice-President, 1964, and we were meeting and had successfully negotiated switchmens tour agreement that replaced the prior one that had been cancelled approximately a year and a half before that.

Q. Who was Mr. Kelly?

A. Mr. Kelly was at that time, Division Plant Superintendent for the Western Area.

Q. What did he say about submitting such an agreement in writing?

A. He said that he was not willing to reduce the existing agreement that we had just reached to writing, because he had been chastised in the past for putting his name to the 1951 Buffalo Switchman's Agreement that had been in effect prior to 1964.

Q. The Switchman's Agreement is the one that you earlier mentioned as being agreed to locally?

A. Yes.

Q. And that had to do with selection of personnel to be switchmen on certain tours?

A. Yes.

Q. Not covered by the collective bargaining agreement?

A. No.

Q. In 1965, was there an agreement that was entered into locally with 1122 and the management with regard to upgrading to higher rated jobs?

A. Yes, there was.

Q. Will you tell us the circumstances of that?

A. In 1965 and shortly before, the first promotional movement was occurring in the company after a period of some six years from the 1958 recess wherein stagnation had occurred within ourmembers' ranks, and that is to say that an employee hired in a lower craft job had no opportunity for promotion because, if anything, the company had been cutting back their force, very similar to what is going on today, in the economy and there was no opportunity for advancement. However, during the period '65-...'64-'65, things started to look better and the workload, this increased, and they were in the process of increasing their numbers of top craft employees to handle the increased workload and during this period of time they had first promoted, the union felt, out of line with seniority, a number of craft employees to top rated jobs, which had generated a number of grievances subsequent to that.

that but within that same period they had hired off the street a number of new employees immediately into top craft jobs, which had resulted in a walk-out, in 1965 of Local 1122 members. They were on the street I think two days and an agreement was reached to return to work, and with the agreement that we would negotiate and try to resolve the problem that caused a walk-out. Myself, as Vice-President, and the President of Local 1122, Mr. Deenan, President of the Local, and Jan Pearce representatives, met locally with company management headed at that time by Mr. Michaelham.

Q. What is his first name if you recall?

A. (No response)

Q. You don't recall?

A. No.

Q. All right.

A. I don't recall.

Q. What position was Mr. Michaelham in?

A. He was Division Superintendent at that time.

Q. You met with him and what did you do?

A. We negotiated a number of top craft openings for existing employees who had been by-passed, we felt, in promotion. The number was substantial for our membership, in the neighborhood of 25 to 50 job openings we were able to fill, and in addition to that the company agreed that the

numbers of employees who had been hired at that time to top craft jobs, even though in what they called management development program; we agreed they would be kept on the payroll for a period of six months and at that time could make a decision whetherin fact they'd be made management, or in fact separated from the company payroll.

Q. Was that agreement carried out, as far as you know?

A. Yes.

Q. Did the collective bargaining agreement ban the company from hiring off-the-street and placing persons in higher jobs?

A. Not specifically.

Q. Did the union grieve that it was not permitted to, or is this what precipitated the walk-out?

A. It was a spontaneous walk-out.

Q. As a result of...what happened?

A. As a result of the company placing...

MR. YAMER: Your Honor, I submit the answer is not responsive to the question. The question was, did the union grieve and there was no response to that question.

JUDGE GADSEN: I will allow it.

MR. LIPSITZ: I have no objection to his responding, obviously.

Q. (By Mr. Lipsitz) Did the union specifically...withdraw the specific question. Did the union aggrieve rather,

the company hiring from off-the-street?

A. Not at that time, no.

Q. Did the union protest, however, the hiring off-the-street during the time that you settled this problem with Mr. Michaelham?

A. At the time we settled with Michaelham, yes, we had a major meeting, about ten union guys and a big bunch of company guys.

Q. That is why you were on the street?

A. Yes.

Q. And as a result you went back and worked out what you just described?

A. (No response)

Q. Is that right?

A. Yes.

Q. Any other meetings besides this one, in April 1969; meetings with the company to try and work out problems outside the grievance procedure, than you have already told us?

A. I can't recall any specifically. There may have been you know, many small...

Q. Can you recall anything about lunch hour duration?

A. That is an agreement we have had locally since prior to CBA, not consistent with the contract, but has been continued in force and effect, although not written down,

since 1961.

Q. Therefore, switchmen are allowed a three-quarter hour lunch for those who work on the day shift where in fact the contract provides specifically one hour for day shift employees in that classification and only one hour or one half hour, optional, at night, on company's option?

A. Of days. Not night shift.

Q. Now, coming down to 1969 in the April 16th meeting; during the course of that meeting which you stated was called for the purpose of discussing matters pertaining to summer hires, what else was discussed?

A. Well, at this same meeting Mr. Hennessy, speaking for the company in attendance, asked us if we would consider withholding our proposed action of each local in the Western Area, the three locals, 1115, 1117 and 1122, approaching our membership with the resolution passed by the Tri-Local Council which was on the Tri-Local tape in this area, to delay banning acting foremen, if you will, or recommending to our respective membership, as the tape said, that we are advising to do and in return for this they were willing and did make a concrete offer to us to limit, in many respects, the acting foremen application in our area. They also said that they would be willing to make this an Upstate Agreement and would also like us to approach the other locals in the Upstate Area and see if they would

also be willing to enter into this, an Upstate Agreement, and failing that, would be willing to make an agreement for the Western Area, on the basis that would be just the three locals, which was accomplished in Tri-Local Council.

Q. When referring to Tri-Local Council, in what areas?

A. 1115, 1117, 1122, membership, executive membership of three locals at that time.

Q. Can you be more specific about what the proposals were that Mr. Hennessy stated to you he'd be willing to negotiate, hopefully for Upstate, but if not, for three locals?

A. I recall them specifically. First they would limit the numbers of employees in our bargaining unit who would be considered for acting foremen. They would be willing to agree to 3% pool of the same; that they would reduce this percentage of the bargaining unit pool of the available acting foremen during the summer vacation period to even less than that; that they would not assign acting supervisors so selected to supervise their own work groups. That in addition to that they would provide an additional assignment of the field dispatcher and senior frame man titles which were craft titles, but if a lead man acted in that capacity with in the contract that we felt could be better utilized prior to that time. In addition to that they offered to limit, or in fact fully restrict any transfers between our areas and other areas of acting supervisors, either within

or without our Western Area, if we agreed to a Western Area agreement. If it was an Upstate Agreement, it would be confined to people used in regard to the pool to that area.

Q. What you have just described, what Mr. Hennessy said, that they would be prepared to negotiate with you?

A. Yes, well...

Q. Before the April 16th meeting?

A. 16th.

Q. Was there some publicity regarding what the three locals were preparing to discuss with their respective membership?

A. Yes.

Q. In what form was the subject matter publicized?

A. It was put onto the Tri-Local tape.

Q. What is the Tri-Local tape?

A. Tri-Local tape was a telephone recording of a message that can be reached by dialing a particular telephone number that all our members had and used to disseminate local information, if you will, to local members and readily available to the company as well, for current happenings of the day, union-wise.

Q. Was this done at...on a weekly, monthly, daily or what other basis?

A. It could have been daily. Sometimes the same tape may have stayed on for a week or more, depending on what we had going, what message we had to get to the people. It was a

communication used to notify our people as well as the company.

Q. Was that number of the tape kept secret or publicized?

A. The number of the tape was publicized in front of the local newspaper, which we mailed to all members, as well as third level management each month.

Q. Now it was in connection with the proposed action that was mentioned on this tape, that Mr. Hennessy asked you to withhold and discuss instead these proposals; is this correct?

A. Yes.

Q. Was there any understanding or agreement reached at that meeting as to what the locals were going to do?

A. No.

Q. Did they say whether they were going to...

A. No, we were...

Q. Did you for example, state whether or not your membership was going to be asked to vote on the ban, or what did you say?

A. I told him I'd take the company's offer back to the first local executive board as representative of 1122.

Q. Did you?

A. Yes, I did.

Q. Anything more about that meeting between the 16th, pertaining to the acting foremen subject than you told us about,

before we go on?

A. No, not that I can think of.

Q. When did you go to the Executive Board?

A. Well...we had a weekly Monday meeting, normally, the Executive Board. So, the next Monday meeting, whenever that would have been.

Q. I'm not going to ask you what transpired in detail at the Executive Board Meeting, but as a result of the Executive Board Meeting, were you authorized to negotiate anything with Mr. Hennessey?

A. Yes. Our local Executive Board did take a position; yes, we would inform, in fact, those powers that be, that we were interesting in negotiating and interested in hearing what I thought I had heard at the meeting at their office which was some alluding to some other possibilities and inducements as well as...it concluded their offer might be sweetened up, if you will.

Q. Did you go back to management then, with further discussion about the subject?

A. Not at that time, no.

Q. Did you at anytime?

A. We put that message on the tape, the local tape.

Q. What message?

A. Notified the International that that would be our position. We were also awaiting the results of the Upstate

survey which Jan said he would take.

Q. Jan who?

A. Jan Pearce, CWA Staff Man agreed to take, of the Upstate Locals, to see if they were interested in Upstate negotiations, or the offer.

Q. Perhaps I misunderstood, but after the Executive Board Meeting and discussions and the discussion of the meeting with Mr. Hennessy, April 16th, 1969, were you or were you not authorized to go back to Hennessy to have further discussions?

A. We were authorized at that time, the Board Decision was, yes, to continue further negotiations.

Q. But you did not?

A. No.

Q. Was there a reason why you did not?

A. Yes, there was.

Q. Tell us the reason.

A. The reason was we were awaiting the survey of the other locals, Upstate, to see if we would enter Upstate for the negotiations of if it would be the Western area for negotiations.

Q. Did you subsequently learn what the attitude of the Upstate Locals was?

A. Yes, we did.

Q. What did you learn?

A. We learned, first through some exchange of letters from some local presidents of the International.

Q. I didn't ask you how you learned; I just want to know if you learned?

A. We learned that some locals were receptive and some weren't.

Q. As a result of the receipt of that information, what did your local do?

A. Well, still we were waiting for the final results and decision of the company, or the International survey, if you will, Jan's survey of the Upstate Locals, and we had not received it when our regularly scheduled May 9th membership meeting came.

Q. What action if any, did your membership take at this May 9th Membership Meeting?

A. After being apprised of the company's offer and the Local Executive Board position, they chose instead to institute a motion from the floor at the membership meeting to invoke, if you will, the very resolution that the Tri-Council had originally proposed, and if you will, out of hand rejected the company offer.

Q. And then what did they decide to do?

A. They voted to ban being acting foremen, at that meeting. They overturned the Executive Board at that point.

Q. Can you recall the resolution; what did the membership

say?

A. The membership said specifically what was on our poster, in evidence. They moved that no member within the bargaining unit would accept an acting supervisor position.

Q. I show you General Counsel's 9 and ask you if this is to what you refer and whether the quoted material in the middle of that is what the membership passed at that meeting?

A. Yes, it is.

Q. Has that action by the membership ever been rescinded by the membership?

A. No, it hasn't.

Q. Now, did the local at that time have a periodic newspaper or slinger or news letter that they published?

A. Local 1122 Newspaper, if you will.

Q. What was the Local 1122 news?

A. At that time a mimeographed sheet of a couple of pages.

Q. I show you what I'd like to have identified as Respondent's Exhibit 17 for identification.

A. Yes.

MR. LIPSITZ: Would you mark this please?

(The document above-referred to, was marked Respondent's Exhibit 17 for identification)

Q. (By Mr. Lipsitz) And I ask you if that is a copy of the Local 1122 news published by the local for the month of May,

1969?

A. Yes, it is.

Q. Whom was that distributed to?

A. That was mailed to all members of our Local 1122, as well as all third level New York Telephone Management in the Western Area.

Q. Is that what you customarily did, mailed it to the third level management?

A. Yes.

Q. Who were they at the time or who did they include at the time?

A. James Hennessy, Edward Thomas; the same people we had met at the meeting.

Q. And others?

A. Many others.

MR. LIPSIUS: I offer this into evidence.

MR. YAMER: Your Honor, the record is replete with documents and stipulations from Counsel for the Respondent to the effect that bond letter was unilaterally imposed to bond 1122. This is just another piece of evidence that is cumulative. There's no dispute that 1122 did in fact invoke a ban, and unilaterally invoked a ban and communicated it to the members.

JUDGE GADSDEN: This has been introduced?

MR. YAMER: No, other documents by Local 1122 to members.

* * * * * *

now is cumulative on the grounds that the Respondent's evidence is cumulative. There's no dispute here, your Honor, that the Company knew that that local invoked the ban. I see no point in just continuing to clutter up the record with all kinds of news clippings to say that we knew about it.

JUDGE GAISDEN: We have testimony with regards to this document, that it was sent, that is all. We have no testimony that it was received by the Employer.

MR. YAGER: There's no dispute that the company knew that the union invoked the ban. As a matter of fact, General Counsel instituted...I mean introduced a document which was a tape or flyer and it is General Counsel's Exhibit No. 9, which is a notice dated June 1st, 1969, that 1122 issued a ban. I don't see the point of constantly throwing in evidence or issuing into evidence documents and articles by Local 1122 that they had a ban. We all knew that they had a ban. The whole world knows that they had a ban. The company knew they had a ban.

JUDGE GAISDEN: I see no issue here as to whether or not they had a ban and I don't know what other purpose Counsel is having to introduce it. If that is the purpose for which it is being introduced, it doesn't harm, it doesn't prejudice your case. I overrule the objection. It will be received as Respondent's Exhibit 18.

(The document above-referred to,

heretofore marked Respondent's Exhibit 18, was received into evidence)

Q. (By Mr. Lipsitz) Mr. McGavis, following the ban represented by Local 1122, did the company promote some persons from the bargaining unit ranks to permanent foremen?

A. Yes, a substantial additional number of...over what had normally been promoted in the past.

Q. Can you give us any recollection as to the figure?

A. I'd say in the neighborhood of 50 to 60 in the six months following the ban as opposed to normally around 15 or 20.

MR. YAKER: Your Honor, may I have the question and answer read back?

(The pending question and answer read back by the Reporter)

JUDGE GADSDEN: Off the record.

(Discussion off the record)

JUDGE GADSDEN: Back on the record. I believe you were speaking, were you?

MR. YAKER: No. The question was read back, thank you.

JUDGE GADSDEN: You're satisfied?

MR. YAKER: I'm not satisfied. I'm satisfied to the extent that I was read back.

JUDGE GADSDEN: Your question has been satisfied.

MR. LIPSITZ: Shall I proceed then?

JUDGE GADSDEN: Yes.

Q. (By Mr. Lipsitz) Mr. McGavis, you were President until you said I think, 1970?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Then you left all union office at that time?

A. Yes, I did. I returned to the rank and file.

Q. And you became an officer again?

A. The very end of 1974 where I was elected Vice-President to fill the unexpired one-year term of Local 1122.

Q. Mr. McGavis, without regard to your knowledge as complete; to the best of your knowledge, from the time of the ban in 1969 through 1970 and 1971 were there any persons promoted to temporary foreman in the area represented by Local 1122?

A. None at all that I'm aware of; absolutely none.

Q. How about the engineering area?

A. Not to my knowledge.

Q. Did any information come to you in your capacity as President during the period that you were from the end of '69 until 1970, that the company was asking people to take these positions?

A. No, the word I got was that they weren't being asked anymore.

Q. You can't be positive that nobody asked: that is just

what you received as the information?

A. I knew of nobody that was even asked; right.

Q. When was your term up in 1970?

JUDGE CALDER: What year, sir?

Q. (By Mr. Lipsitz) '70. What month?

A. Expired in November.

Q. 1970?

A. Yes.

MR. LIPSITZ: I have no further questions of the witness.

MR. MATCHULAT: I don't have any questions, your Honor.

MR. YAKER: Your Honor, I have a couple of questions.

CROSS-EXAMINATION

Q. (By Mr. Yaker) Mr. McGavis, you stated in 1964 there was an agreement made at a meeting with Jack Kelley. Was that a meeting that was as a result of a particular grievance that was filed by the Local?

A. No.

Q. Were you present at the meeting?

A. Yes.

Q. In what capacity?

A. Vice-President of 1122.

Q. Was there a complaint by the union filed with the company of any nature?

A. No.

Q. What was that meeting about?

A. Well, it was about our existing switching agreement that had been negotiated about six months prior to that.

Q. Who negotiated that agreement?

A. Art Blyer, who was then President of Local 1122.

Q. Was that CWA International negotiated?

A. No, it was a local agreement.

Q. Was it in writing?

A. No.

Q. What did that deal with?

A. It dealt with swtiching tours, the rotation, how the duration of rotation, how you would fill vacancies.

Q. Was that covered by the collective bargaining agreement?

A. No, it wasn't.

Q. Is it your testimony the tours weren't covered in the collective bargaining agreement?

A. It wasn't in variance but the selection of particular people were not in the agreement.

Q. The agreement wasn't in variance with the collective bargaining agreement, and it is an extension, is that correct?

A. Yes.

Q. And the collective bargaining agreement does cover tours?

A. It was paid for tours.

Q. Does it cover tour time and duration?

A. No, it doesn't.

Q. Does it cover hours of tours, particularly?

A. Particular day or night you may tour.

Q. Isn't that correct?

A. Only paid for those hours.

Q. Isn't there a provision in the contract that talks about rotation of hours, also?

MR. LIPSITZ: Excuse me, you're talking about...

THE WITNESS: It wasn't there in '64.

MR. LIPSITZ: Please, Paul. My objection is about...

JUDGE GADSDEN: The time?

MR. LIPSITZ: What years he is talking about and what contracts.

JUDGE GADSDEN: Time reference.

MR. YALER: The witness stated that there was a meeting in 1964 and I'm talking about the contract that was in effect at that time.

MR. LIPSITZ: That is what you want to know. You have now...

Q. (By Mr. Yaler) You had said there was nothing in the contract which talked about tours?

A. I didn't say there was nothing, no, I didn't say that.

Q. Was there anything in the contract that you knew, which talked about length of tours?

A. Nothing.

Q. I show you General Counsel's Exhibit No. 6, Article 18. Could you read the title of that?

A. Okay. "The tours and hours of tours shall be as follows:"

Q. Can you read the title of the article?

A. "Length of Tours."

Q. This is an article then that deals with lengths of tours; is that correct?

A. True.

Q. And your local agreement was not in variance with the contract; is that correct?

A. (No response)

Q. You stated before the local agreement that was made was not in variance with the contract; isn't that correct?

A. I spoke of tours. My use of the word "tours" was speaking of numbers of weeks on a particular shift, if you will.

Q. In any event your local agreement was not in variance with the contract?

A. No, it wasn't.

Q. And it was not an agreement in writing; isn't that correct?

A. True. Not a signed agreement. The local did reduce it to writing.

Q. Not signed by the company is that correct?

A. Correct.

Q. Now, you then stated that in 1965...withdraw that. In 1964 do you know whether or not the collective bargaining agreement contained that provision which said that there shall be no waiver of the agreement...of the contract except a waiver that is signed by the duly authorized representatives of the parties?

A. I don't think I know what that means, let alone know if it was in the contract.

Q. I show you a provision here in General Counsel's Exhibit 6, which was in 1964 collective bargaining agreement between the parties and refer you to Article 30. Would you mind reading that please?

A. "Article 30 Waiver or Modification 30.01 This Agreement constitutes the entire agreement between the parties, and no waiver or modification shall be effective unless signed by the parties hereto, and no such writing, applicable to any particular instance or instances, shall be construed as any general waiver or modification, but shall be strictly limited to the extent and occasion specified herein."

Q. Was the local party to this contract?

MR. LIPSITZ: I'm going to object. That is a legal question, your Honor. Does he mean is it bound by it as a third party beneficiary or direct party, meaning he signs it.

MR. YAFFE: I mean direct party since it is signed.

MR. LIPSITZ: It speaks for itself.

Q. (By Mr. Yaker) Who negotiates contracts on behalf of the CWA?

A. The book you are holding in your hand?

Q. Yes.

A. As opposed to local negotiations?

Q. The contract negotiations; the International signs the contract; isn't that correct?

A. True.

Q. Youssid that in 1965 there was an agreement that you entered into with Mr. Michaelham dealing with promotions to higher classifications; isn't that correct?

A. True.

Q. Wasn't that agreement the result of a strike?

A. Right.

Q. And didn't the union claim then at that time that the company was violating the contract in hiring people off the street?

A. I don't know. We claimed that our people were very upset in that they had hiredpeople off the street in lieu of promotion.

Q. Correct. And didn't you say that violated...I don't recall us filing a specific grievance stating that. You stated that in your conversation with Mr. Michaelham. Isn't it true there was an arbitration award eventually resulting

from a grievance filed by CWA, greiving the hiring of people directly off the street at the higher classifications?

A. As a result of that incident?

Q. Eventually, at some point after that incident, wasn't there a grievance filed and arbitration conducted by the CWA which protested hiring off the street into higher classifications and wasn't there an arbitration award rendered?

MR. LIPSITZ: Objection.

JUDGE CARLTON: I'll allow the witness to answer that.

THE WITNESS: Yes, I think there was some years later.

Q. (By Mr. Yaker) Some years...isn't it a fact that in 1969 or '70 there was eventually an arbitration award?

A. Yes.

Q. Which was rendered by Arbitrator Barrett, which stated that the company had the right to hire off the street to higher classifications?

A. It was a different situation, a different set of facts than what you say is true.

Q. In that respect it is the union, and the union had filed that grievance?

A The company had a...gave promotion...

Q. Mr. McGavis the question is, was an arbitration award rendered by Arbitrator Barrett granting the company the right to hire off the street?

A. I assume so. I don't have any record to substantiate it.

Q. That was as a result of a grievance filed by the union; isn't that correct?

A. I assume so.

Q. Did Local 1122 file that grievance that culminated in the arbitration award?

A. Yes, I think it was 1122, if we are talking about the same case. Our case is our...

Q. There is only one arbitration award.

A. One arbitration award?

Q. On that subject.

A. I'm not aware of that either.

Q. Now, in the dispute that you had in 1965 with Mr. Michaelham, wasn't it the union's or local's position that seniority rights under the contract were being violated?

A. I would assume so, certainly.

Q. Was the agreement that you had with Mr.Michaelham signed in writing?

A. The National...the International participated in the negotiations.

MR. YAKER: The question is very simple, Mr. Arbitrator. This question is was there an agreement signed in writing. That question can be answered with a yes or no.

Q. (By Mr. Yaker) Was there an agreement signed with Mr. Michaelham?

A. I don't know.

Q. In any event, Mr. McGavis, was there ever an agreement signed between the local or the CWA and the New York Telephone Company prohibitting the company from appointing acting supervisors?

A. Not to my knowledge.

Q. Did the local or the CWA ever file a grievance and take to arbitration the company's right to appoint acting supervisors?

A. I don't recall ever claiming that the contract prohibitted them.

Q. Are you familiar with the equalization of overtime practices in the company?

A. Yes, I am.

Q. When an employee is promoted to position of temporary supervisor or acting supervisor, how is he charged with overtime?

A. Seems to me that when he returns to the bargaining unit, when he is outside the bargaining unit and returns to the bargaining unit, that this period, if it was of some duration less than 30 days or for whatever reason it's outside the bargaining unit, he was charged with an average of overtime that his group, if he returns to the same group, that his group might have worked in his absence.

Q. So when a craftsman or a bargaining unit employee becomes an acting supervisor he is charged with the average overtime

of his group that he was in prior to his accepting the position; is that correct?

A. If he went in the Coin Department and drives a truck, when he went on temporary basis; when he came back in the bargaining unit, and I don't know if it says specifically acting foreman.

Q. Is that a fact that that practice has been in existence for many years; is that correct?

A. Yes.

Q. That is covered by the collective bargaining agreement; isn't that correct?

A. Charging of overtime?

Q. Yes.

A. Yes.

Q. As a matter of fact, I refer you to General Counsel's Exhibit No. 2, Sub Paragraph 8 on Page 130. Would you read that? Right here. Would you read that?

A. Paragraph 8, on 130?

Q. Yes.

A. I thought you said..."an employee temporarily promoted to a management job shall be charged with the average overtime of his unit during the entire period of his absence from his unit on the acting assignment."

Q. I refer you to Page 74 of General Counsel's Exhibit 6, which is the collective bargaining agreement between CMA and

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the Telephone Company in 1964. Would you read Sub Paragraph 8 in that one?

A. Page 74, Paragraph 8. "An employee temporarily promoted to a management job shall be charged with the average overtime of his unit during the entire period of his absence from his unit on the acting assignment."

Q. This provision or similar provision has been in effect as far as you know, since 1964, and this governs the equalization of overtime?

A. That is the part of the governing of equalization of overtime, yes.

JUDGE GOLDEN: What did you say? Pardon me?

THE WITNESS: That is the part of the governing of equalization of overtime.

Q. (By Mr. Yaker) Mr. McGavis in your meeting with Mr. Hennessy, is it your testimony that Mr. Hennessy offered to limit the company's right to appoint acting supervisors?

A. Yes, in the ways that I described.

Q. But that offer was never culminated in an actual agreement; you rejected the company's offer; isn't that correct?

A. Yes, sir.

MR. YAKER: No further questions.

REDIRECT EXAMINATION

Q. (By Mr. Lipsitz) You were asked about an award by

Arbitrator Barrett in 1970. Have you read that award?

A. Yes, I have read it. I have some vague recollection of it.

Q. Did it arise from the events that you testified occurred in 1965 when there was a walk-out of 1122?

A. No.

MR. LIPSITZ: No further questions.

JUDGE GADOLA: You may step down.

(Witness excused)

MR. LIPSITZ: I call Mr. Youngberg.

ROYBERT I. YOUNGBERG

was called as a witness by and on behalf of the Respondent and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Lipsitz) What is your full name and address for the record?

A. Roybert I. Youngberg. 22 College, Gowanda, New York.

Q. Mr. Youngberg, are you presently employed by the Telephone Company?

A. Yes, I am.

Q. For how long have you been so employed?

A. 23 and one half years.

Q. Are you the bargaining...are you in the bargaining unit represented by the CWA?

A. Yes, I am.

Q. Are you presently an officer; do you hold any position in any local union?

A. No, I don't. I may have to qualify that. I think I'm probably still the Political Chairman. I'm not sure.

Q. Until recently other than thinking that you are still probably, if not sure, the Political Chairman; do you hold any other position?

A. No, I don't.

Q. Until recently?

A. Oh, until recently.

Q. Yes.

A. At one time I was President. The year 1966 and '70, President of Local 1117.

Q. What local?

A. Local 1115.

Q. During the time that you were President of Local 1115, did you and company management ever work out any agreement, negotiate any agreement to have any understanding or arrangement pertaining to any matters that were worked out directly with you and the management?

A. Yes, we did.

Q. Can you give me your best recollection as to the items and when they occurred?

A. Best recollection would be right now, and I think I

could probably think of more if I had an opportunity to review.

Q. Give us what you have now.

A. This case in question and the meeting in question, Mr. Hennessy and Mr. Tracey.

Q. We'll get to that.

MR. YAFFE: I'm going to object. The answer is not being responsive.

JUDGE GOLDEN: I don't think he's answered yet. He's making an effort to ascertain the question, I believe. Go right ahead.

Q. (By Mr. Lipsitz) I'm addressing my question to other than the meeting in April of 1969, on any other occasion before then.

MR. YAFFE: I object to the question as having no foundation on fact. Your Honor, the testimony of Mr. McGavis is that no agreement was reached, no local agreement or otherwise was reached at any meeting. The question, to say any local agreements except those at the meeting, would be an improper question.

MR. LIPSITZ: Well, I'll withdraw the question.

Q. (By Mr. Lipsitz) Prior to April 16th, 1969, did you have any occasion to sit down with management and work out any agreement or understanding locally; that is to say between your ownself and your officers and local management on any particular subject?

A. Yes, we did.

Q. Can you tell me what subjects?

A. Vacations.

Q. When did you work out something on vacations?

A. Usually yearly. You know, we'd review the vacations.

Q. Who is the "we" that were reviewing?

A. The local officers and the management personnel that would be involved in Local 1115 jurisdiction.

Q. Officer of Local 1115?

A. Right.

Q. What would you do as the result of reviewing those vacations?

A. If we weren't satisfied, we used the grievance procedure.

Q. Did you talk about duration of vacation and the money paid or what are we talking about?

A. Duration and what weeks.

Q. You were talking about the scheduling of vacations?

A. Talking about the scheduling of vacations.

Q. And if you didn't like them what would you do?

A. We would revert to the grievance procedure.

Q. Before reverting to the grievance procedure, would you ever try to work out a grievance with the company?

A. We always did. I can't remember a vacation grievance that we didn't work out. My memory doesn't...

Q. Mr. Youngberg, what did you review annually with the

company, a proposed schedule of vacations or something else?

MR. YAMIN: Mr. Arbitrator...the witness has been testifying and testified to exactly what he reviewed. For Mr. Lipsitz to lead the witness and submitting the answer to him, I think is improper.

JUDGE GAISMEN: Try to refrain from leading, Mr. Lipsitz, please.

MR. LIPSITZ: I'll try, your Honor, and may he answer the question or shall I withdraw it?

JUDGE GAISMEN: I would appreciate it if you would rephrase the question or withdraw it.

MR. LIPSITZ: I withdraw the question.

Q. (By Mr. Lipsitz) Mr. Youngberg, what you referred to as an annual or yearly basis regarding vacations, what exactly was it that was the subject of discussion with the company management?

A. In this specific area, right; vacations.

Q. I'm asking about the issues.

A. They would usually submit the schedules to us that they proposed and we would look them over.

Q. You are talking about schedules showing when an individual would be on vacation?

A. Right.

Q. What else do the schedules show?

A. How many eligible to go on vacation within a work group.

Q. And after you received that information, what did the local union officers then do with it?

A. Reviewed it.

Q. Then what did you do?

A. We negotiated the areas we were in disagreement with.

Q. And precisely, for example, what were you sometimes in disagreement with?

A. Maybe they would allow only one person off in a work group, where we thought they could allow two.

Q. That is the kind of thing which you tried to negotiate?

A. That's the kind of thing we negotiated.

Q. Did you from time to time negotiate changes in a prospective vacation schedule?

A. I can vaguely remember some changes but I can't possibly remember the specifics.

Q. I didn't ask you that. I asked you as a consequence of review and meeting, did you make some changes with the management?

A. To my recollection we did.

Q. Any other subject which on a local level, you and management representatives endeavored to work out some problems?

A. We had a number of summer hires. They usually told us how much they were going to have.

Q. Did you just accept what they told you or did you argue about it from time-to-time?

A. There were times when we thought they needed more than a summer hire in a particular work location.

Q. Did they ever change the number as a result of the discussion?

A. I don't know if they changed it as a result of discussions, but our membership did increase considerably in that period of time.

Q. Any other subjects that you can think of?

A. Not off hand.

Q. In April, April 16th, 1969, did you attend a meeting in Buffalo with management representatives and representatives of Local 1122 and 1117?

A. Yes, I did.

Q. How did you learn about the meeting?

A. I think it was a call from Mr. Hennessy that he would like to talk to us on the subject of summer hires.

MR. YAKER: Mr. Arbitrator...I'm sorry, your Honor.

JUDGE GADSDEN: Please correct the record with the statement.

MR. YAKER: It is a vocational hazard.

JUDGE GADSDEN: That is all right.

MR. YAKER: Your Honor, it seems to me that unless this witness is going to produce something additional or something new, that I think his testimony may be just cumulative and we'd be wasting time. I think we'd be willing to stipulate

that the witness had he been called to testify both on direct and cross-examination would testify to the same effect that Mr. McGavis did on just what took place at the meeting. I'm trying to save time in putting on cumulative witnesses and avoid giving the same answers.

JUDGE GADSDEN: You'd have to offer your proposed stipulation to Mr. Lipsitz.

MR. YAKER: Yes, I just offered it. Would you read it, please?

(The prior statement was read back by the Reporter)

MR. LIPSITZ: I think I understand what you're saying. Before I enter into the stipulation, are you going to offer rebuttal testimony about the same meeting?

MR. MATCHULAT: No.

MR. YAKER: No.

MR. LIPSITZ: Then I'm prepared to stipulate that if the same questions were asked of this witness regarding what occurred at this same April 16th, 1969 meeting with the company concerning the subject of temporary foreman, that the witness would substantially answer the questions in the same fashion as Witness McGavis.

JUDGE GADSDEN: Thank you. And the stipulation is received as read.

MR. MATCHULAT: Thank you.

MR. YAKER: Thank you.

Q. (By Mr. Lipsitz) One other thing, please. I neglected to show this to Mr. McGavis.

A. Yes.

MR. LIPSITZ: Would you mark this, please?

THE WITNESS: I...

(The document above-referred to, was marked Respondent's Exhibit 19 for identification)

Q. (By Mr. Lipsitz) Mr. Youngberg, I show you what has been identified as Respondent's Exhibit 19 and ask you if you received that or a copy of that notice prior to April 16th, 1969 meeting; if you can recall?

A. Yes, I do remember.

Q. Do you remember how you got it or how it came into your possession?

A. That I don't remember. I can remember discussing these areas.

Q. Ididn't ask you but I am now going to ask you. That was my next question. During this meeting were those areas discussed with the company?

A. Yes, they were.

Q. Can you tell us your recollection as to whether the company stated that that is what they were planning to do, as reflected on Respondent's 19?

MR. YAKER: Mr. Lipsitz, we may be able to shorten this. If you give me the document, I can ask my people if this was

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given to the union to tell the union what the company was planning to do on summer hires.

MR. LIPSITZ: Sure.

MR. YAKER: Your Honor, we would be prepared to stipulate that this document was handed to the union at the time that we...the company official, Mr. Hennessy, met with local representatives, at which time local representatives were told that this was what the company's plans were for the summer hires.

MR. LIPSITZ: In what area?

JUDGE GADSDEN: What year, too.

MR. YAKER: It says April 10th, 1969. This was the April 1969 meeting.

MR. LIPSITZ: What geographic area?

MR. YAKER: Western Area, New York.

MR. LIPSITZ: That is the area?

MR. YAKER: That is what it says, Western New York Area.

MR. LIPSITZ: That covers the areas of Local 1122, 1117 and 1115.

MR. YAKER: Yes.

MR. LIPSITZ: I don't have extra copies, your Honor, unless either between the Federal Government and our Government Office they can provide it.

JUDGE GADSDEN: Respondent's Exhibit 19 is received into evidence.

(The document above-referred to, heretofore marked Respondent's Exhibit 19 was received into evidence)

Q. (By Mr. Lipsitz) Do you recall whether at that April 16th meeting concerning the subject matter of Respondent's 19, there was discussion?

A. Yes, there was discussion.

Q. Do you recall whether, as a result of discussion there were any changes made in the company's program, or don't you recall at the present time?

A. I can recall some objections that we had to their implication...implementation of it...okay, I'll get the word out...and some of the objections we had to it and also the way they were handling it in some respects.

Q. Can you recall whether or not the company changed anything as a result of that?

A. Specifically changed, I can't recall.

MR. LIPSITZ: I have no further questions of the witness.

MR. MATCHULAT: I have nothing.

MR. YAKER: No questions.

JUDGE GADSDEN: You may step down, sir.

MR.LIPSITZ: We rest, your Honor.

JUDGE GADSDEN: All right. Witness excused.

(Witness excused)

MR. YAKER: Your Honor, we have the rest of the grievance minutes on General Counsel's Exhibit 19. If you

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